

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

KEVONGH J. GRANT

Plaintiff,

v.

APTIM ENVIRONMENTAL AND
INFRASTRUCTURE, INC., WITT O'BRIEN'S, LLC,
ODEBRECHT CONSTRUCTION, INC., NATHAN
McCANN, ANDRES McCANN, JOHN DOES, JANE
DOES AND UNKNOWN CORPORATIONS

Defendants.

Case. NO. 1:19-CV-0025

EXHIBIT 13

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

KEVONGH J. GRANT

Plaintiff,

v.

APTIM ENVIRONMENTAL AND
INFRASTRUCTURE, INC., WITT O'BRIEN'S, LLC,
ODEBRECHT CONSTRUCTION, INC., NATHAN
McCANN, ANDREW McCANN, JOHN DOES, JANE
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AFFIDAVIT

I, David Orphey, first duly sworn, deposes and states as follows:

1. I am employed by Aptim Environmental and Infrastructure, LLC ("Aptim") in the capacity of a Principal Project Controls Analyst at Aptim. I am over 21 years old, of sound mind and competent to testify. Except as otherwise stated, I have personal knowledge of the facts stated in this affidavit. If called as a witness, I could provide testimony regarding the facts discussed herein.
2. I base my statements contained herein upon information obtained from various sources, including my own personal experience; Aptim's corporate records; corporate structure; documents maintained by Aptim in the regular course of business; and other information obtained by me in the ordinary course of business.
3. In my capacity as Principal Project Controls Analyst, I have access to the books and records of Aptim regarding the EHRVI program.
4. This Affidavit is made in support of Aptim's Motion for Summary Judgment against the claims made by Plaintiff Kevongh J. Grant ("Grant").

Affidavit
Case No. ST-19-CV-0025
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5. On September 21, 2018, APTIM contracted with the Virgin Islands Housing Finance Authority (VIHFA) to perform work related to the Emergency Home Repairs V.I. ("EHRVT") program in furtherance of the Territory's recovery from Hurricanes Irma and Maria. *See Exhibit 1*, Bates Nos. APTIM001-APTIM00181 (the "Prime Contract").
6. In furtherance of its duties under the Prime Contract, APTIM subcontracted with various subcontractors, including Patriot Response Group, LLC ("Patriot") and Navigation Construction, LLC ("Navigation"). *See Exhibit 3*, at 11-13, APTIM's Response to Plaintiff's Interrogatories; *see also Exhibit 4*, APTIM00196-APTIM00206, Subcontract between APTIM and Navigation.
7. On September 26, 2018, APTIM and Patriot Response Group, LLC executed a subcontract agreement for Patriot to perform work in furtherance of the Prime Contract between APTIM and VIHFA (the "Subcontract"). *Exhibit 4*, APTIM00301-APTIM00309.
8. On October 11, 2018, APTIM and Navigation Construction LLC executed a subcontract agreement for Navigation to perform work in furtherance of the Prime Contract between APTIM and VIHFA (the "Subcontract"). *Exhibit 4*, APTIM00196-APTIM00206.
9. Neither Patriot or Navigation were assigned to any project by Aptim on October 31, 2018 from 6:00 p.m. to midnight and on November 1, 2018 between midnight and 6:00 a.m.
10. Aptim never assigned any work, duties, or responsibilities directly to either Andrew McCann or Nathan McCann.
11. Aptim never directed the means or methods of any work performed by Andrew McCann or Nathan McCann.
12. Aptim never provided Andrew McCann or Nathan McCann with any tools.
13. Aptim never provided Andrew McCann or Nathan McCann with any vehicles

Further, affiant sayeth not.

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DATED: February 7th, 2023

DAVID ORPHEY
Principal Project CTR Analyst)
) ss.

Subscribed and sworn to before me this 7th day of February 2023 by

David Orphey

WITNESS my hand and official seal.

B. R. Hunter
Notary Public
Commission No. 31198
My Commission expires on My Death

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OFFICIAL SEAL
BENJAMIN R. HUNTER
BAR ROLL NO. 31198
STATE OF LOUISIANA
My Commission is for Life

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
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EXHIBIT 1

**CONTRACT FOR CONSTRUCTION REPAIR SERVICES
FOR THE SHELTERING TEMPORARY ESSENTIAL POWER ("STEP") PROGRAM
EMERGENCY HOME REPAIRS V.I.**

**between
THE VIRGIN ISLANDS HOUSING FINANCE AUTHORITY
and
APTIM ENVIRONMENTAL & INFRASTRUCTURE, INC.**

This Contract (hereinafter referred to as the "Contract") is made and entered into this 21st day of September, 2018, by and between APTIM Environmental & Infrastructure, Inc. ("Contractor") and the VIRGIN ISLANDS HOUSING FINANCE AUTHORITY, an autonomous instrumentality of the Government of the Territory of the United States Virgin Islands, whose address is 3202 Demarara Plaza, Suite 200, St. Thomas, Virgin Islands 00802 (hereinafter "VIHFA"). Contractor and the VIHFA may sometimes hereinafter be collectively referred to as the "Parties" and individually as a "Party."

Emergency Home Repairs V.I. ("EHRVI")

On September 5, 2017, as damages to the Territory were imminent due to the projected path of Hurricane Irma, the Governor of the United States Virgin Islands proclaimed a State of Emergency as authorized by the Territorial Emergency Management Act, 23 VIC, Ch. 10 Sec. 1005(d) (the "Act") *attached hereto as Exh. 1*. On September 6, 2017 and on September 19, 2017, Hurricane Irma and Hurricane Maria devastated the U.S. Virgin Islands causing massive destruction to thousands of homes, businesses and the general infrastructure.

Pursuant to Section 1005(g) of the Act the Governor of the Virgin Islands may take certain actions for coping with the emergency including, but not limited to, the suspension of the provisions of any statute prescribing the procedures for conduct of territorial business, or the orders, rules and regulations of any territorial agency. Consistent with the Proclamation of the State of Emergency and the Act, the Governor of the Virgin Islands appointed the VIHFA as the Lead Territorial Representative on the Unified Housing Task Force to implement the Sheltering and Temporary Essential Power ("STEP") Pilot Program authorized by an Inter-governmental agreement between the Federal Emergency Management Agency ("FEMA") and the Government of the Virgin Islands ("GVI") the FEMA-TERRITORY AGREEMENT FEMA-4335-DR-VI and FEMA-4340-DR-VI *attached hereto as Exh. 2*, to perform repairs to an estimated 15,000 owner-occupied homes in the Territory damaged by Hurricane Irma and Hurricane Maria.

The EHRVI Contractor must be capable of delivering minor, but critical, services on a large scale and possess, or can obtain, the resources required to deliver in an expedited manner. Contractor shall provide such services under guidelines recently established by FEMA for eligible victims of Hurricane Irma and Hurricane Maria. The Contractor shall furnish all labor and materials and perform all the work required to demolish, and/or repair, and complete in a thorough and workmanship like manner for the EHRVI Program, in strict accordance with Contract Documents prepared by the VIHFA. It is recognized by the Parties herein that said

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Contract Documents which include the RFP, any Addenda thereto, any Amendments to the Contract and Work Orders that may be issued under the Contract impose duties and obligations upon the parties herein, and said Parties thereby agree that they shall be bound by said duties and obligations. For these purposes, all the provisions contained in the aforementioned documents are incorporated herein by reference with the same force and effect as though said documents are herein set out in full.

I. DESCRIPTION OF SERVICES.

A. Scope of Services Requested.

The Contractor shall perform, or cause to be performed, residential construction rehabilitation projects, including case management, for the VIHFA. The Contractor's responsibility will include but not be limited to, minor housing repair on a large scale, maintaining record keeping systems, managing appointments and construction schedules, warranty issues and complaints, obtain and provide support for qualified subcontractors and self-performance manpower, quality control and safety field oversight, executing logistics for all materials and providing all services on an expedited basis and direct payment of subcontractors upon receipt of payment from VIHFA. In addition, the Contractor will be responsible to provide as needed for management and trade labor: Travel, lodging, basic life support, local transportation etc. (the "Work"). Contractor will attempt to repair or replace existing material as determined by an approved scope of work for each home. Contractor shall develop policies and procedures, to carry out repairs, as directed by the VIHFA's Project Manager/Grant Administrator. *A more detailed Scope of Services is contained herein as Exhibit 3.* Contractor will mobilize and perform services throughout St Croix, St John and St Thomas.

B. Rehabilitation Scope of Work

It is anticipated that homes eligible for rehabilitation will require an array of repairs ranging from minor to major (but with cumulative values less than \$25,000). The scope of work for each repaired structure will vary, but may include, although not be limited to, the items listed on *Exhibit 3, Exhibit 9 and 10.*

Additional Requirements. In addition to performing the repairs listed above, Contractor shall perform and/or provide the following:

1. Provide case management coordination with the property owner from assignment to construction completion and acceptance.
2. Obtain all necessary permits and approvals prior to the commencement of the Work for each structure (if applicable);
3. Be familiar with specialty construction elements associated with historic

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properties.

4. Provide professional and/or skilled labor, equipment and materials adequate to perform the Work in accordance with the scope of work issued for each eligible survivor's residential structure while ensuring that all applicable housing standards and codes are met; Perform all repairs in a manner consistent with current local building codes, standards, inspection requirements or acceptable construction industry standards and all applicable environmental planning and historic preservation (EHP) laws and regulations including at a minimum 2018 International Residential Code (IRC). Items will be repaired or replaced as directed in an approved work order.
5. Provide documentation and tracking of construction progress;
6. Meet with individual property owners to review the scope of work to be performed prior to commencement of work;
7. Provide all necessary bonding and insurance requirements;
8. Provide a sixty-day warranty applicable to goods and services specifically related to construction work performed; response personnel are to be located on St Thomas and St Croix and have a 24-hour response time;
9. Meet VIHFA work completion requirements;
10. Respond to VIHFA's open records request in a timely manner;
11. Maintain project documentation;
12. A level II Primavera schedule shall be submitted prior to construction. This schedule will need to show each home in the program and define a critical path.
13. Contractor will be responsible for providing a list of all active construction sites no later than 48 hours prior to actual construction starting. Any changes to the schedule will be provided no later than 5:00 am of the scheduled day's work.
14. Contractor and lower-tier subcontractors will be responsible for all work being completed prior to requesting a Final Site Visit (FSV). The contractor will provide a signed checklist with all Statement of Work (SOW) item and any change order items checked prior to the FSV inspection. This will include the completeness of work and quality of work performed. If during the FSV, any of the scoped items have not been completed and/or poor workmanship observed, the FSV will be cancelled.
15. Contractor shall provide full-time QC/CM field oversight. There shall be one assigned person to every 5 active homes. This person will work out of the field and not the office. Will be responsible for documenting all activities performed throughout the day in a daily report, which will be uploaded to the project portal by 10:00 am the following day. A standardized reporting format with checklist will be provided by the contractor for approval;
16. Once work has commenced on a home, the contractor must complete the

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work within the timeframe provided by the contractor's submitted schedule.

17. At any time, no more than 5% of all homes under construction shall be allowed to be inactive.

18. Perform repairs using materials of average quality used in new construction, in accordance with 44 CFR § 206.117(b)(4)(iii), and considering the accessibility needs of the occupant; and

19. Perform repairs to accessibility features and accessible routes guided by the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and HUD Design Details for Accessible Disaster Relief Housing.

20. Contractor shall maintain its own warehousing facility on STT and STX for all project materials procured. Contractor shall allow VIHFA representatives to conduct periodic materials inspections.

21. Materials incorporated in to the project shall be either procured direct by APTIM or will be owner furnished. Exhibit 8, Owner furnished material. Contractor will make necessary attempts to utilize its labor to fulfill work orders. In the event owner furnished materials are not available the Contractor reserves the right to be paid for applicable hard and soft costs for each day until materials are made available or other arrangements can be made. In event that Contractor must provide owner furnished materials for itself then a markup of 10% will be added.

22. Contractor shall set up and operate a material tracking system to include the complete supply chain mechanism. Contractor shall share the supply chain information with VIHFA upon request.

23. Contractor shall provide submittals for materials to be incorporated into the project for review by VIHFA.

24. Owner furnished material will be made available at a centrally placed location on the islands of St. Croix and St. Thomas. It is the Contractors responsibility to retrieve the materials for these locations and transport to their holding areas and/or construction sites.

Representatives from the Contractor and VIHFA and/or their designated representatives, will conduct Inspections/assessments of homes to determine the eligibility of said home for the program. Simultaneously a repair scope of work will be generated and mutually agreed upon by and between Contractor and VIHFA. The agreed upon repair scope, the agreed upon unit pricing, and a scheduled performance period, will be used to generate a "Work Order" with an estimated value for the work to be performed at the home.

Contractor will provide the services described in each Work Order issued under this Contract as mutually agreed upon on a Work Order by Work Order basis. Any changes to the scope of work will require an executed change order agreed to by both parties.

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C. Environmental Conditions.

Pursuant to the FEMA Recovery Program Guidance dated November 17, 2017, Section VII Policy Subsection (H). [I]f it is determined that a home is not suitable for the STEP program due to the presence of toxic or hazardous materials, that site is not eligible for assistance. *See Exhibit 2.*

VIHFA acknowledges that, prior to Contractor performing Work at a site under this Contract, Contractor has, under this Contract, neither created nor contributed to the creation or existence of any air, subsurface, ground, or other environmental hazards, contamination, or pollution or the presence of toxic or hazardous substances or materials, whether latent or patent, or the release thereof or the violation of any law, regulation, rule, or order relating thereto ("Pre-Existing Conditions"). Contractor assumes no title, ownership of, or liability or responsibility under this Contract for the creation, existence, or presence of any Pre-Existing Conditions.

To the extent permitted by Law, VIHFA agrees to indemnify, and hold harmless Contractor and its subcontractors, and their employees and agents from and against any claims, demands, losses, liabilities, causes of action, actions, suits, damages, costs, penalties, fines, and expenses, including reasonable attorneys' fees, of any kind or character arising from or relating to Pre-Existing Conditions, including mold, except where such claims, demands, losses, liabilities, causes of action, actions, suits, damages, costs, penalties, fines, and expenses are caused by the sole negligence or willful misconduct of Contractor.

VIHFA represents that it shall immediately notify Contractor of any information, data, or documents in the possession of or reasonably known to VIHFA relating to subsurface conditions affecting any site. VIHFA further agrees to advise Contractor prior to the commencement of services of the existence of dust, fumes, gas, noise, vibrations, or other particulate or known particulate matter at or near a site that may create or contribute to a potential health hazard or nuisance to persons working within the area and the existence and identity of any known or suspected hazardous or toxic substances, Waste, or other hazards or hazardous conditions that may pose a threat to human health, safety, or the environment if reasonably known to VIHFA. If the foregoing conditions are encountered during the course of Contractor's Services, VIHFA agrees that the scope of services, the project schedule, compensation, or any other appropriate terms and conditions of a Work Order may be equitably adjusted in accordance with a mutually agreed upon, written change order.

D. Disposition of Homeowner Goods

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Contractor will hire licensed and bonded moving and storage companies (Agents). These Agents will provide moving and storage services to homeowners whose household goods will need to be removed from their homes for safekeeping during construction. These services will be scheduled by the contractor with the Agent, but it will be responsibility of the Agent to arrange the services with the homeowner. Costs for the services will be reimbursable to the contractor.

Agents shall:

1. Provide Contractor with an inventory of the belongings removed from the home, which inventory is signed and, thereby, acknowledged by the homeowner.
2. Remove all belongings from the home and return them to the home within 3 days from the receipt of the Certificate of Occupancy for the home.
3. Store all household goods in a secure, dry and appropriate facility.
4. Be solely responsible for determining where the homeowner's belongings are stored.
5. Provide Contractor with an inventory of the belongings returned to the home, which inventory is signed and, thereby, acknowledged by the homeowner.

II. Contractor responsibility

Contractor shall supervise and direct the work and the work of its Subcontractors. Contractor agrees to maintain the professional standards applicable to its profession and to contractors doing business in the United States Virgin Islands.

Contractor shall give preference in hiring to Virgin Islands contractors and resident employment applicants who are qualified and have been residents of the Virgin Islands for two or more years. All job vacancies will be advertised and posted for a period of at least 72 with the Employment Service Division within the Virgin Islands Department of Labor. Should Contractor or its Subcontractors have demonstrated that reasonable efforts have been made to offer positions to qualified and available contractors and resident employment applicants and the Contractor requires additional staffing, then the requirement of this subsection shall be waived.

Contractor shall be responsible for its performance and that of its Subcontractors and Vendors. However, Contractor shall not be responsible for health or safety programs or precautions related to VIHFA's activities or operations or those of VIHFA's other contractors and consultants or their respective subcontractors and vendors ("Other Contractors"). For the duration of the contract, VIHFA and the Program Manager reserve the right to reasonably demand removal of Contractor's personnel, subcontractors and vendors whose performance is unsatisfactory.

Contractor shall have no responsibility for (i) for the direction of Other Contractors' personnel; (ii) coordination of Other Contractors' work; or (iii) for Other Contractors' failure to perform the

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work in accordance with any applicable construction contract unless Contractor is directly or one of Contractor's subcontractors is directly performing the construction. Contractor shall not be responsible for pre-existing site conditions or the aggravation of those preexisting site conditions to the extent not caused by the negligence or willful misconduct of Contractor. Contractor shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of VIHFA, non-APTIM Contractors or others at the project site ("Project Site") other than Contractor's employees, sub-consultants and vendors. So as not to discourage Contractor from voluntarily addressing health or safety issues while at the Project Site, in the event Contractor does identify such issues by making observations, reports, suggestions or otherwise, Contractor shall have no authority to direct the actions of others not under Contractor's responsibility and control and shall have no liability, responsibility, or affirmative duty arising on account of Contractor's actions or forbearance.

Unless otherwise specified in this Contract, the Contractor will provide for and/or pay for all labor, materials, equipment, tools, machinery, transportation, and other goods, facilities, and services necessary for the proper execution and completion of the work within its scope.

The Contractor will maintain order and discipline among employees and will not assign anyone unfit for the Work. The Contractor warrants to the VIHFA that all materials and equipment incorporated are new and that all work will be of good quality and free of defects or faults. The Contractor, as a cost of the work, will pay all use and other taxes related to the work and will secure and pay for building permits and/or other permits, fees, inspections and licenses necessary for the completion of the work unless otherwise specified in the Contract.

The Contractor will indemnify and hold harmless the VIHFA from and against all claims, damages, losses, expenses, legal fees or other costs arising or resulting from the Contractor's performance of the work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to cause injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the VIHFA.

Contractor will comply with all rules, regulations, laws, ordinances and orders of any public authority or inspector bearing on the performance of the work. Contractor will provide shop drawings, samples, product data or other information provided for in this Contract where necessary. Contractor will keep the homeowner's residence free from waste, or rubbish resulting from the work. Contractor will remove all waste, rubbish, tools, construction materials, and machinery promptly after completion of the work and place waste and rubbish at the curb line (right of way) unless directed otherwise in the Work Order.

Contractor will endeavor to complete the repairs within the period prescribed in the construction timetable set forth in each Work Order. With respect to the scheduled completion of the work,

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if the Contractor is delayed at any time in the progress of the work by fire, labor disputes, acts of God, unreasonable permitting delays or other causes beyond the Contractor's control, the completion schedule for the work or affected parts of the work shall be extended by VIHFA or Program Management contractor.

Contractor is responsible for initiating, maintaining, and supervising all necessary or required safety programs. *See, Exhibit 5.*

Contractor must correct promptly any work of its own or its subcontractors found to be defective or not complying with the terms of the Contract. Contractor will provide a sixty-day warranty on all labor and materials used in the repair of the property. This warranty shall extend sixty (60) days from the date of the final approved inspection of the unit or longer if prescribed by laws unless otherwise specified by other terms of this Contract.

By executing this Contract, the Contractor represents that it understands local conditions, including VIHFA rules and regulations (attached as Exhibit 11), local building regulations and conditions under which the work is to be performed.

There shall be no guaranty of a minimum number of assignments to any EHRVI contractor. The VIHFA may in its sole and reasonable discretion, require a reduction or termination of assignments to any EHRVI contractor based on the evaluation of the EHRVI contractor's capacity or performance. The EHRVI Contractor shall have no rights against the VIHFA or the VIHFA's Program Management contractor in connection with such reasonable reduction or termination.

Contractor shall attend meetings and work sessions as called for by VIHFA or the Program Manager. Contractor shall ensure the attendance of Contractor authorized decision makers on the subject or discipline of the meetings and work sessions. Contractor will have continued management level representation at the EHRVI Program Management Office during operating hours. All prime subcontractors are also required to be in attendance. Contractor shall serve as the VIHFA's or Program Manager's point of contact for the scheduling of meetings and work sessions and be responsible for providing its authorized decision makers and all prime subcontractors with advance notice of the date, time and location of scheduled meetings and work sessions.

Assignments from VIHFA to Contractor may include professional design services, such as the practice of architecture or engineering. The rights and responsibilities of the parties with regard to these services are governed by the terms of this Agreement to the same extent as are the services described in Section 1.A. Assignments from VIHFA shall be agreed upon by both parties in advance of accepting additional services, as such rates and fees shall be agreed upon in advance.

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III. Deliverables

The Contract will be considered complete when Contractor has completed each Work Order and the VIHFA has accepted all work. Acceptances shall not be unreasonably withheld.

IV. Approval of Key Personnel

VIHFA and the Program Manager reserves the right of final approval of all Contractor's project management key personnel as defined and such approval will not be reasonably withheld prior to assignment to the project. The Contractor shall provide qualifications at a minimum for the following positions: Project Manager, Deputy Project Manager, Construction Manager, Quality Control Manager and Safety/Security Manager.

V. Substitution of Key Personnel

Contractor's key personnel assigned to this Contract, listed in the response to the RFP, may not be replaced without the written consent of the VIHFA. Such consent shall not be unreasonably withheld or delayed provided an adequately qualified replacement is offered. In the event that any employee of Contractor becomes unavailable due to the resignation, illness, or other factors outside of Contractor's control, Contractor shall be responsible for providing an adequately qualified replacement.

The Contractor shall present to the Program Manager all subcontractors intended to be used on the project. No subcontractors will be allowed to join the project without the expressed written approval by the Program Manager.

A. The Contractor shall assure that subcontractors at their first level will self-perform a minimum of 50% of their assigned scope of work. Second level subcontractors will have to be self-performing. The only exception granted will be for contractors who act as labor providers to contractor or first level subcontractors.

B. As a rule, the Contractor will not allow more than 2 levels of subcontracting. Third level subcontractors for specialty trades may be authorized but will have to be approved by the Program Manager.

VI. Change Orders

Services for each Work Order will be limited to the tasks listed and associated unit price basis on each Work Order. Any and all additional work shall require a Change Order agreed to by each Party. Additional work may result from differing site conditions, omitted tasks on initial inspection reports, conditions requiring unanticipated materials, repairs, delays, or other changes in the extent or character of the scope of services in each Work Order.

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Any additional work that does not have a corresponding unit price due to the uniqueness of such work will be paid on a time and material basis, as agreed to by both Parties in a Change Order.

VIHFA acknowledges that any delay in approving a Change Order will cause hardship to Contractor and thus agrees to review and approve or deny any requested Change Order within 72 hours of receipt of a properly submitted and formatted change order.

VII. Work Orders exceeding \$25,000 Cap.

The Parties recognize that the EHRVI program is intended for repairs under the threshold of \$25,000. If a Work Order has been issued under the \$25,000 threshold, but it is determined during the execution of that Work Order that Change Orders will require services beyond that amount, Contractor agrees to immediately notify VIHFA. The contractor will then generate a cap waiver request. VIHFA will then process this request through FEMA for authorization of additional funding. VIHFA will either approve or deny the Cap Waiver request or may direct the Contractor to place the unit back to post-disaster condition.

VIII. PAYMENT PROCESS

- A. Invoices shall be submitted on a bi-weekly basis. Invoices shall be organized so that services associated with each individual Work Order are clearly identified in separate detailed listings of charges.
- B. As set forth in Work Orders, compensation shall be invoiced on a unit price basis. Services will be invoiced in accordance with the schedule and shall not exceed the maximum amount set forth in individual Work Orders, unless a Change Order for the Work Order(s) is approved by VIHFA and the contractor in writing. Services not authorized by a Work Order shall not be paid. The pricing and fee schedules are made a part of this Contract and will remain in effect for the term of the Contract. Full or partial payment will be made upon satisfactory completion of each Work Order as accepted by the Project Manager. VIHFA will notify Contractor of any disputed charges within 15 days.

“Unit price”, also referred to as Unit Assembly Price, as forth in Exhibit 6, includes all labor costs, material costs, permit and licensing fees, local transportation costs for labor and materials, and profit/fee for a complete installation of the services/work identified for that unit price in a house within the U.S. Virgin Islands from pick-up at the closest material storage/distribution facility on either St. Thomas or St. Croix in accordance with the agreed upon Work Order. *See, Exhibit 6.* Labor costs include removing existing appliances, demolition and preparation of the work space, and placement of debris at the curb for disposal by others. The installation trade work and installation of new fixtures

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is included.

Pass through costs may be submitted as incurred. Pass through costs include the items on *Exhibit 7* and other indirect costs necessary to accomplish the work performed under this Contract. Pass through costs for taxes, builders risk insurance policy, bid bond, performance bond, social costs due to terminating employment of local staff at the end of a phase or the program, mobilization, demobilization, and advance payments will be invoiced to VIHFA at actual cost incurred, while the remaining pass through costs will include a ten percent (10%) administrative handling fee. In addition to the above, pass through costs will include lodging and per diem, without markups.

- C. Payment of invoices must be approved by the Program Manager of the EHRVI program or its designee. Payments shall be made 15 days after receipt of an approved invoice.
- D. Indemnification: Should the Contractor, after receipt of payment of invoices from the VIHFA fail to pay in a timely manner all persons who have fulfilled their obligations to perform labor and/or furnish materials in the prosecution of the work provided for herein, including by way of example workmen, laborers, mechanics, and furnishers of materials, machinery, equipment and fixtures, then Contractor agrees to indemnify VIHFA for said payment(s). Timely payments from Contractor to its Subcontractors and Vendors shall mean within Ten (10) business days of receiving payment from VIHFA.
- E. Funding for work done under the Contract shall be authorized increments and initially set as not to exceed \$100,000,000.

IX. TERM OF CONTRACT; TERMINATION OR SUSPENSION OF CONTRACT

A. Contract Term

This Contract shall begin on September 21, 2018 and end on November 30, 2018 unless terminated sooner under the provisions of the Intergovernmental agreement FEMA-TERRITORY AGREEMENT FEMA-4335-DR-VI and FEMA-4340-DR-VI. **The Contract may be extended by mutual agreement if also approved by FEMA. VIHFA shall give written notice to the Contractor of such intent to seek an extension not less than thirty (30) days prior to the expiration of the Contract.**

B. Termination/Suspension for Cause

The VIHFA may, after giving reasonable written notice specifying the effective date, suspend or terminate this contract in whole or in part if Contractor materially fails to comply with any material term of this contract, which shall include, but not be limited, to the following:

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1. Repeated failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and guidelines, policies or directives as may be applicable at any time;
2. Failure, due to Contractor's negligence or willful misconduct, of Contractor to fulfill in a timely and proper manner the obligations under this Contract;
3. Continual submission by Contractor of reports to the GVI, VIHFA or FEMA, or their auditors, reports that are incorrect or incomplete in any material respect, provided Contractor is given notice of said failure and fails to correct the same within a reasonable amount of time; or
4. Improper use of funds as provided for under this Contract.
If, through any cause, Contractor shall otherwise fail to fulfill in a timely and proper manner, its obligations under this Contract, or if Contractor shall violate any of the covenants or stipulations of this Contract, the VIHFA shall thereupon have the right to terminate this Contract by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days prior to the effective date of said termination. Contractor shall be paid for all authorized Services properly performed prior to termination.

If the VIHFA does not issue a payment of an invoice, through no fault of the Contractor, within fifteen days after the date established in the Contract, then the Contractor may, upon three additional days' notice to VIHFA, stop the Work until payment of the amount owing has been received.

C. Termination for Convenience

Either Party may terminate this Contract at any time by giving at least thirty (30) days prior written notice to the other Party. Contractor shall be entitled to payment for Services performed up to the date of termination contained within the notice, to the extent that the Services have been satisfactorily performed and are otherwise reimbursable under the terms of this Contract plus reasonable termination and demobilization costs incurred.

D. Termination Due to Unavailable Funding

The continuation of this Contract is contingent upon the appropriation and release of funds by FEMA to fulfill the requirements of this Contract. Failure of the appropriate authorities to approve and provide an adequate budget to the VIHFA for fulfillment of the Contract terms shall constitute reason for termination for convenience of the Contract by either Party.

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Contractor shall be paid for all authorized Services properly performed prior to Termination plus reasonable termination and demobilization costs incurred.

X. Indemnification and Limitation of Liability.

A. Force Majeure

Neither Party shall be liable for any delay or failure in performance beyond its control resulting from Acts of God or force majeure (extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of hazardous materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party). The Parties shall use reasonable efforts to eliminate or minimize the effect of such events on their respective duties under the Contract. Contractor may be entitled to an equitable adjustment in Work Order schedules and unit prices in the foregoing circumstances

B. Indemnity, Indemnification and Limitation of Liability

Contractor shall be liable for the actions of its agents, employees, partners or Subcontractors and shall indemnify and hold harmless the VIHFA, its Board of Directors, agents and employees, from suits, actions, damages and costs relating to personal injury and damage to real or personal tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, its agents, employees, partners or Subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the VIHFA.

If applicable, Contractor will indemnify, defend and hold the VIHFA and its Board of Directors, agents and employees harmless, , from and against any damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs for infringement of a United States Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the VIHFA shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the VIHFA or its Board of Directors, agents and employees may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as VIHFA shall

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require.

Unless otherwise specifically enumerated herein or in the Work Order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The VIHFA and its Board of Directors, agents and employees may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

The Contractor shall perform the contract in accordance with the terms and conditions hereof and shall pay all persons who have fulfilled obligations to perform labor and/or furnish materials in the prosecution of the work provided for herein, including by way of example workmen, laborers, mechanics, and furnishers of materials, machinery, equipment and fixtures. Contractor shall indemnify a homeowner and the VIHFA, its Board of Directors, agents, and employees, for any and all damages and costs incurred by the homeowner and the VIHFA, including reasonable attorneys' fees, resulting from any lien filed by any of the Contractor's Subcontractors, including but not limited to those classifications listed above, against a homeowner's property.

XI. ADMINISTRATIVE AND COMPLIANCE PROVISIONS

A. Taxes

Contractor is responsible for payment of all applicable taxes from the funds to be received under this Contract. Contractors' federal tax identification number is 77-0589932 ; DUNS # 10-951-5077 .

B. VIHFA Furnished Resources

The VIHFA will provide specific project information to Contractor necessary to complete Services described herein. All records, reports, documents and other material delivered or transmitted to Contractor by the VIHFA shall remain the property of the VIHFA and shall be returned by Contractor to the VIHFA, upon request, at termination, expiration or suspension of this Contract.

Contractor shall be entitled to reasonably rely upon without independent verification the information and data provided by VIHFA or obtained from generally accepted sources within the industry, except to the extent such

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verification by Contractor is expressly required as a defined part of the Work.

All records, reports, documents, or other material or data, including electronic data, related to this Contract and/or obtained or prepared by Contractor, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the Services contracted for herein shall become the property of the VIHFA, and shall, upon request, be returned by Contractor to the VIHFA at termination or expiration of this Contract. Cost incurred by Contractor to compile and transfer information for return to the VIHFA shall be billed on a time basis, subject to the maximum amount of this Contract. Software and other materials owned by Contractor prior to the date of this Contract and not related to this Contract shall be and remain the property of Contractor.

1. Performance Bond

The undersigned further agrees to execute and deliver to VIHFA at the time the contract documents are executed, a Performance Bond with Power of Attorney, on the forms provided, in an amount equal to fifteen (15%) of the contract value by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a U.S. Virgin Islands domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to ten percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide, or by an insurance company that is either domiciled, or licensed in the U.S. Virgin Islands or owned by U.S. Virgin Islands residents and is licensed to write surety bonds.

2. Verification of Insurance Coverage

Contractor shall furnish the VIHFA with certificates of insurance reflecting proof of required coverage, the certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf, the certificates are to be received and approved by the VIHFA before work commences.

Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, this contract, at the election of the VIHFA may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

Contractor shall include all Subcontractors as insureds under its policies and shall

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be responsible for verifying and maintaining the certificates provided by each Subcontractor. Subcontractors shall be subject to all of the requirements contained herein. VIHFA reserves the right to request copies of Subcontractor's certificates at any time.

3. Subcontractors

Contractor may enter into subcontracts with third parties ("Subcontractors") for the performance of any part of Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the VIHFA for any breach in the performance of Contractor's duties. All terms and conditions in this contract shall apply to Subcontractors' contracts. Subcontractors' contracts must meet all contracting, indemnity, insurance and regulatory compliance requirements required by the Contract. The Parties hereby agree that any non-compete Contract or similar Contract with any Subcontractor(s) seeking to restrain the ability of the Subcontractor to perform any services for the VIHFA shall be deemed unenforceable, null and void, to the extent of such non-compete provision, but without invalidating the remaining provisions of the contract with the Sub-Contractor.

4. Installation Floaters Insurance

Contractor shall purchase and maintain, through a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, with AM Best rating of A- or higher, Installation Floater insurance written on an "all risk" basis. The Floaters Risk insurance shall include the interests of the Contractor, and Subcontractors for losses associated with the Contract of all tiers and shall provide full waivers of subrogation in favor of Contractor, Subcontractors, Sub-subcontractors of all tiers and all other parties where required by written contract.

General Liability shall be provided and shall include, insurance against the perils of fire (with extended coverage) and physical loss or damage including, theft, vandalism, malicious mischief, collapse, equipment breakdown, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements. The Installation Floater shall cover all property stored off-site, property in transit and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss. Coverage for terrorism should also be included.

The Installation Floater and General Liability policies will include the following as Named Insureds: Subcontractors of all tiers and all other parties where required

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by written contract.

C. Fund Use

Contractor agrees not to use proceeds from this Contract to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law or is being considered by the Government of the U.S. Virgin Islands.

Contractor and all Subcontractors shall certify that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor and each subcontractor shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award

D. Confidentiality of Data.

All financial, statistical, personal, technical and other data and information relating to the VIHFA's operation which are designated confidential by the VIHFA and made available to Contractor in order to carry out the Contract, or which become available to Contractor in carrying out the Contract, shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the VIHFA. The identification of all such confidential data and information as well as the VIHFA's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the VIHFA in writing to Contractor. If the methods and procedures employed by Contractor for the protection of Contractor's data and information are deemed by the VIHFA to be adequate for the protection of VIHFA's confidential information, such methods and procedures may be used, with the written consent of the VIHFA, to carry out the intent of this paragraph. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in Contractor's possession, is independently developed by Contractor outside the scope of this Contract, is obtained from other public agencies, or is rightfully obtained from third parties.

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All of the reports, information, and data prepared or assembled by Contractor under this Contract are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the VIHFA. This excludes any information that must be provided to homeowners. This does not extend to information that was obtained from the public domain such as public agencies or sources of information available to the general public.

E. Audits and Inspections.

It is hereby agreed that the VIHFA, FEMA, Ernst & Young, Office of Inspector General, and/or FEMA monitors, and auditors contracted by any of them shall have the option of auditing all records and accounts of Contractor and/or its Subcontractors that relate to this Contract at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data upon providing Contractor or Sub-Contractor, as appropriate, with reasonable advance notice. Contractor and its Subcontractors shall comply with all relevant provisions of 21 VIC Ch.2, Sec. 103(q) pertaining to audit requirements. Any deficiencies noted in audit reports must be fully cleared within thirty (30) days after receipt by Contractor or sub-Contractor, as appropriate.

Failure of Contractor and/or its Subcontractor to comply with the above audit requirements will constitute a violation of this Contract and may, at the VIHFA's option, result in the withholding of future payments and/or return of funds paid under this Contract.

Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Contract for a period of five (5) years after closeout of this Contract.

F. Copyright

No materials, to include but not limited to reports, maps, or documents produced as a result of this Contract, in whole or in part, shall be available to Contractor for copyright purposes. Any such material produced as a result of this Contract that might be subject to copyright shall be the property of the VIHFA and all such rights shall belong to the VIHFA.

G. Covenant Against Contingent Fees and Conflicts of Interest

Contractor shall warrant that no person or other organization has been employed or retained to solicit or secure this Contract upon contract or understanding for a

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commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the VIHFA shall have the right to annul this Contract without liability or, in its discretion, to deduct from this Contract or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee, or to seek such other remedies as legally may be available.

No member, officer, or employee of Contractor, or agents, Subcontractor, member of the governing body of Contractor or the locality in which the program is situated, or other public official who exercises or has exercised any functions or responsibilities with respect to this Contract during his or her tenure, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity or benefit, which is part of this Contract.

H. Section 3 Compliance in the Provisions of Training, Employment and Business Opportunities

The Work to be performed under this Contract shall be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD and/or FEMA assistance or HUD and/or FEMA -assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD and/or FEMA assistance for housing.

The parties to this Contract shall agree to comply with HUD and/or FEMA's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

Contractor agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining Contract or other understanding, if any, a notice advising the labor organization or workers' representative of Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s)

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taking applications for each of the positions, and the anticipated date the work shall begin.

Contractor agrees to include this Section 3 clause in every contract and/or subcontract subject to compliance with regulations in 24 CFR part 135, and shall agree to take appropriate action, as provided in an applicable provision of the contract or subcontract or in this Section 3 clause, upon a finding that any Sub-Contractor is in violation of the regulations in 24 CFR part 135. Contractor's Subcontractors will not subcontract with any subcontractors where such Sub-Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

Contractor certifies that any vacant employment positions, including training positions, that are filled (1) after such Contractor and its Subcontractors are selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent such Contractor's obligations under 24 CFR part 135.

Noncompliance with HUD and/or FEMA's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD and/or FEMA assisted contracts.

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I. Discrimination and Compliance Provisions

Contractor and its Subcontractors shall abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Federal Executive Order 11246 as amended; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Fair Housing Act of 1968 as amended; the Housing and Community Development Act of 1974; the requirements of the Americans with Disabilities Act of 1990; 41 CFR 60-4 *et seq.*; 41 CFR 60-1.4; 41 CFR 60-1.8; 24 CFR Part 35; the Flood Disaster Protection Act of 1973; and Federal Labor Standards Provisions (form HUD and/or FEMA -4010), as well as all applicable provisions not mentioned are deemed inserted herein.

Contractor and its Subcontractors shall not discriminate unlawfully in its employment practices and will perform its obligations under this Contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

Any act of unlawful discrimination committed by Contractor or its Subcontractors, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Contract or other enforcement action.

J. Section 109 of the Housing and Community Development Act of 1974

No person in the United States Virgin Islands shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under Section 109 of Title I of the Housing and Community Development Act of 1974. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

K. Clean Air Act, Clean Water Act and Other Requirements

Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The VIHFA recognizes that Contractor is not responsible for environmental or safety

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compliance by Grant Recipients.

L. Energy Efficiency

Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the VIHFA Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act to the extent applicable to Contractor and its Subcontractors. The VIHFA will provide such standards and policies to Contractor as a pre- condition of this stipulation.

M. Eligibility Status

Contractor, and each tier of Subcontractors, shall certify that it is not on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs promulgated in accordance with E.O.S. 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

N. Drug-Free Workplace Requirement

Contractor hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR part 21. Further, there shall be a provision mandating compliance with the Drug-Free Workplace Act of 1988, as amended, in any contracts executed by and between Contractor and any third parties using funds under this Contract in accordance with 48 FAR part 23.500, et seq, and 48 CFR part 52.223-6.

REQUIRED DOCUMENTS:

1. Public Liability. Contractor shall provide evidence of commercial general liability insurance with coverage of One Million Dollars per occurrence and Five Million Dollars aggregate, inclusive of bodily injury, death and property damage. The Government of the Virgin Islands shall be included as "Additional Insured". Evidence of public liability insurance shall be delivered to VIHFA within Ten (10) working days after the award.

2. Workers' Compensation. Contractor shall maintain Workers Compensation insurance as required by law.

XII. MISCELLANEOUS PROVISIONS

A. No Assignment

No Party may transfer or assign this Contract or transfer or assign any of its rights

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or assign any of its duties hereunder without the express written consent of the other Party. However, if the parties do mutually agree to an assignment, all rights and obligation set forth herein shall inure to the benefit of the Parties and to their respective successors and assigns. Both Parties recognize that the Contractor has affiliated companies who have specialized expertise, necessary certifications/registrations or other capabilities that may make use of such affiliates more suitable for the performance of all or part of the services. The Contractor shall be entitled without additional consent to assign or subcontract performances of the services, in whole or in part, to any of the Contractor's subsidiaries or affiliates upon written notice to the VIHFA; provided, however, that the Contractor shall remain liable for the performance, obligations and responsibilities of such Affiliates under this Contract.

Nothing in this provision shall prevent Contractor from entering into subcontracts with one or more Subcontractors as provided elsewhere in this Contract.

B. Severability

The terms and provisions of this Contract are severable. Unless the primary purpose of this Contract would be frustrated, the invalidity or unenforceability of any term or condition of this Contract shall not affect the validity or enforceability of any other term or provision of this Contract. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Contract, and if such a provision cannot be reformed, enforce this Contract as set forth herein in the absence of such provision.

C. Entire Contract

This Contract, together with the RFP and addenda issued thereto by VIHFA, the proposal submitted by the Contractor in response to the RFP and any exhibits specifically incorporated herein by reference, constitute the entire Contract between the Parties with respect to the subject matter, superseding all negotiations, prior discussions and preliminary contracts related hereto or thereto. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Contract.

In the event of a conflict or inconsistency between any of the Contract Documents, the conflict or inconsistency shall be resolved by giving precedence in the following order:

1. Work Orders issued under this Contract, and then

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2. This Contract and all amendments; then
3. Exhibits and Attachments hereto; then
4. The RFP and any Addenda hereto; and then
5. Terms of this Contractor's proposal.

D. No Authorship Presumptions

Each of the Parties has had an opportunity to negotiate the language of this Contract in consultation with legal counsel prior to its execution. No presumption shall arise, or adverse inference be drawn by virtue of authorship, and each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Contract, including but not limited to any rule of law to the effect that any provision of this Contract shall be interpreted or construed against the Party that (or whose counsel) drafted that provision. The rule of no authorship presumption set forth in this paragraph is equally applicable to any Person that becomes a Party by reason of assignment and/or assumption of this Contract and any successor to a signatory Party.

E. Amendments, Supplements and Modifications

This Contract may not be amended, supplemented or modified except in a writing signed by both Parties in which they express their mutual intention to amend, supplement or modify this Contract. No oral understanding or Contract not incorporated into the Contract is binding on any of the Parties. This Contract may not be amended by a Work Order.

No amendment shall invalidate this Contract, nor relieve or release the VIHFA or Contractor from its obligations under this Contract. The VIHFA may, at its discretion, amend this Contract to conform with federal, VIHFA or local governmental guidelines, policies and available funding amounts, or for other reasons. All amendments are subject to approval by the Office of Contractual Review.

F. No Personal Liability of Individual Representatives

No covenant or Contract contained in this Contract shall be deemed to be the covenant or Contract of any official, trustee, officer, agent or employee of any corporate Party in his individual capacity, and neither the officers of any Party nor any official executing this Contract shall be liable personally with respect to this Contract or be subject to any personal liability or accountability under this

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Contract by reason of the execution and delivery of this Contract.

G. Acts of Grant Sub-Recipients

The obligations of Contractor under this Contract to provide guidance and/or instructions to Grant Sub-Recipients is limited to that necessary for grant management and compliance and shall inure to the benefit of the VIHFA only and not to any third party, including the Grant Sub-Recipients. This Contract shall not be construed to create any responsibility of the Contractor to VIHFA or the Grant Recipient for the means, methods and safety requirements of any Grant Sub-Recipient or any of Grant Sub-Recipient's Contractors, contractors, representatives or agents in the design or construction of projects, beyond any obligation it may have under this Contract relating to grant management and compliance with the federal regulations governing the use of funding provided to the Grant Recipient.

H. Delay or Omission

No delay or omission in the exercise or enforcement of any right or remedy accruing to a Party under this Contract shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

I. Contract Approvals and Controversies

Neither Party shall be obligated under this Contract until all legally required approvals are obtained.

J. Legal Authority

Contractor represents that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, giving the Contractor legal authority to enter into this Contract, receive funds, authorized by this Contract and to perform the services the Contractor is obligated to perform under this Contract.

K. Public Communications

Contractor shall not issue any public communications regarding the Program and Contractor's activities under this Contract without the prior consent of the VIHFA.

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L. Safety

Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of its performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1926, shall be observed and Contractor shall take or cause to be taken such additional safety and health measures as Contractor may determine to be reasonably necessary.

M. Ownership

All records, reports, documents and other material delivered or transmitted to Contractor by VIHFA shall remain the property of VIHFA, and shall be returned by Contractor to VIHFA, at Contractor's expense, at termination or expiration of this Contract. All records, reports, documents, or other material related to this Contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of VIHFA, and shall, upon request, be returned by Contractor to VIHFA, at Contractor's expense, at termination or expiration of this Contract.

N. No Third Party Beneficiaries

This Contract does not create, nor is it intended to create, any third party beneficiaries. The VIHFA and the Contractor are and shall remain the only parties to this Contract and the only parties with the right to enforce any provision thereof and shall have the right, without the necessity of consent of any third party, to modify or rescind this Contract.

O. Provision Required by Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the request of either Party the Contract shall forthwith be amended to make such insertion or correction.

P. Applicable Law, Remedies and Venue.

The Parties will use their best efforts to resolve disputes informally at the lowest possible levels of decision making, and consensual alternative dispute resolution

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processes may be used by mutual agreement of the Parties.

This Contract shall be governed by and construed in accordance with the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

Contractor agrees that no individual property owner is party to this Contract.

XIII. Notices

Any notice required or permitted to be given under or in connection with this Contract shall be in writing and shall be either hand-delivered or mailed, postage prepaid by first-class mail, registered or certified, return receipt requested, or delivered by private, commercial carrier, express mail, such as Federal Express, or sent by, electronic mail or other similar form of rapid transmission confirmed by written confirmation mailed (postage prepaid by first-class mail, registered or certified, return receipt requested or private, commercial carrier, express mail, such as Federal Express) at substantially the same time as such rapid transmission. All such communications shall be transmitted to the address or numbers set forth below, or such other address or numbers as may be hereafter designated by a Party in written notice to the other Party compliant with this Section.

To Contractor : Mike Donnelly, _____
APTIM Environmental & Infrastructure, Inc.
1780 Hughes Landing, Suite 1000
The Woodlands, TX 77380
mike.donnelly@aptim.com

To the VIHFA : Daryl Griffith, Executive Director
Virgin Islands Housing Finance
Authority
3202 Demarara Plaza, Suite 200
St. Thomas VI 00802
Tel: (340) 777-4432
Email: deriffith@vihfa.gov

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IN WITNESS WHEREOF, the parties intending to be legally bound hereby, caused these presents to be executed as of the day and date first above written.

WITNESSES:


Cindy Tolson

CONTRACTOR
APTIM Environmental and
Infrastructure, Inc.


MIKE DONNELLY

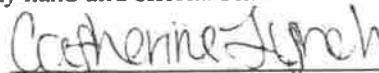
ACKNOWLEDGMENT

STATE OF Texas)
COUNTY OF Montgomery) ss:

On this 19 day of September, 2018, before me, the undersigned officer, personally appeared MIKE DONNELLY, who acknowledged himself to be President of Government, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of APTIM

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SEAL.


Notary Public



**Contract for Emergency Home Repair
FEMA-4335-DR-VI and FEMA-4340-DR-VI
VIHFA APTIM**

Reviewed for Legal Sufficiency

Flavia E. Logie, Esq.

Dated: September 17th, 2018.

WITNESSES:

Virgin Islands Housing
Finance Authority

Daryl Griffith
Executive Director

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. CROIX) ss:

On this 21st day of September, 2018, before me, the undersigned officer, personally appeared DARYL GRIFFITH, who acknowledged himself to be the Executive Director of the Virgin Islands Housing Finance Authority, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of the Authority as Executive Director.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SEAL



Michelle E. Gaskin
Notary Public
Notary Public, Croix, USVI District
My Commission Exp. At the Pleasure of
Lieutenant Governor, Commission # GNP-02-15

Contract for Emergency Home Repair
FEMA-4335-DR-VI and FEMA-4340-DR-VI
VIHFA – APTIM

EXHIBITS AND ATTACHMENTS

- Exhibit 1. Territorial Emergency Management Act & Proclamation
- Exhibit 2. FEMA-TERRITORY AGREEMENT: FEMA-4335-DR-VI and FEMA-4340-DR-VI
- Exhibit 3. Scope of Work
- Exhibit 4. FEMA Recovery Program Guidance
- Exhibit 5. Safety Requirements
- Exhibit 6. Unit Prices
- Exhibit 7. Pass-Thru Costs
- Exhibit 8. Owner Furnished Materials
- Exhibit 9. Sample Engineering for Roof Replacements
- Exhibit 10. Roof Hardening SOW
- Exhibit 11: VIHFA Rules and Regulation
- Attachment A. Rate Schedule

Exhibit 1

Territorial Emergency Management Act & Proclamation

2/9/2018

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More -

Document 23 V.I.C. § 1005

**Exhibit 1. Territorial Emergency Management Act
& Proclamation**

23 V.I.C. § 1005

Copy Citation

Statutes current through Act 2009 of the 32nd Legislature, including all code changes through October 26, 2017

§ 1005. The Governor and emergencies or major disaster

- (a) The Governor is responsible for meeting the dangers to the Territory and people presented by emergencies or major disaster.
- (b) The Governor may cooperate with the President of the United States, the heads of the Armed Forces of the United States, the nation of Coast Bureau, FEMA, or the Department of Homeland Security, and with any other appropriate officers or agencies of the United States or the several States or Possessions thereof, and in connection therewith, take any measures which the Governor may deem proper to effectuate any request of the President and appropriate federal officers and agencies for any action requiring emergency management coordination and cooperation, including, but not limited to, drills, exercises, tests, and mobilization of VMD. Appropriate measures may be taken to control the conduct of citizens and the movement of pedestrians and automobile or vessel traffic during, prior to, and subsequent to drills, exercises, or actual emergencies to include the evacuation of the civilian population.
- (c) The Director shall serve as the principal assistant and advisor to the Governor with respect to emergency management and disaster preparedness planning for the Territory and in this capacity shall act on behalf of the Governor, as required, in coordinating and directing governmental and nongovernmental emergency service agencies. The Director shall take such actions and promulgate such rules and regulations as are consistent with federal and territorial law or policy necessary to carry out the functions assigned to him by law or by direction of the Governor. The Director shall resolve interagency issues relating to emergencies or emergency management and shall utilize VITEMA as the single territorial agency responsible to the Governor for administrative supervision of emergency management activities under this chapter. He shall render periodic reports of these activities to the Office of the Governor.
- (d) A state of emergency on account of an emergency or major disaster may be declared by a proclamation of the Governor if he finds that an emergency or major disaster has occurred or that the occurrence thereof is imminent. The state of emergency shall continue until the Governor finds that the threat or danger has passed or that the response and recovery has progressed to the point that a state of emergency no longer exists, whereupon he shall terminate the state of emergency by further proclamation. No state of emergency may continue for longer than 30 days unless renewed by the Governor. All proclamations issued under this subsection shall indicate the nature of the emergency or major disaster, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of emergency. A proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and a copy filed with VITEMA.
- (e) A proclamation of a state of emergency may activate the disaster preparation, response and recovery aspects of the territorial and inter-jurisdictional emergency and major disaster plans applicable to the area in question and, if they are so activated, the proclamation shall also authorize the deployment and use of any forces to which the plan or plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to emergencies or major disasters. The Governor may, by proclamation, also authorize alternative means for activating the plan.
- (f) During any state of emergency or major disaster the Governor shall be commander-in-chief of all forces available for emergency duty. To the greatest extent practicable, the Governor may delegate or assign command authority by orders issued at the time of the emergency or major disaster.
- (g) In addition to any other powers conferred upon the Governor by law during any state of emergency, he may for the purpose of coping with the emergency, do any of the following:
- (1) Suspend the provisions of any statute prescribing the procedures for conduct of territorial business, or the order, rule, or regulations of any territorial agency.
 - (2) Utilize all available resources of the Territory.
 - (3) Transfer the direction, personnel, or functions of territorial departments and agencies or units thereof.
 - (4) Subject to any a pollution requirements for compensation under section 1130 of this title, commandeer or utilize any private property.
 - (5) Direct and compel the evacuation of all or a part of the population from any section or threatened area within the Territory.

2/5/2018

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- (6) Prescribe routes, modes of transportation and destinations in connection with evacuation
- (7) Control ingress and egress to and from an affected area, the movement of persons within the area and the occupancy of premises, including barges, boats, ships and other watercraft therein
- (8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles, or any other materials deemed to be critical for the health and safety of the people of the Territory of the Virgin Islands.
- (9) Make provision for the availability and use of temporary emergency housing
- (10) Through the Commissioner of Licensing and Consumer Affairs, take action necessary to freeze and maintain costs of goods and services to the public at a price level existing immediately prior to the Governor's proclamation of the state of emergency. Such price freeze shall include, but not be limited to: food items, water, beverages, health and medical care products, fuel, rents, construction goods and services, clothing, furnishings, and such other goods and services as are deemed appropriate under the circumstances presented
- (11) Take any other action he deems necessary

History

—Added July 2, 2008, Sec. 7074, § 1, Sec. 1, 2002, pp. 60-61

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THE UNITED STATES VIRGIN ISLANDS

**OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE**

**Charlotte Amalie, V.I. 00802
340-774-0001**

**RENEWAL ORDER AND PROCLAMATION
BY THE GOVERNOR
OF THE UNITED STATES VIRGIN ISLANDS
DECLARING A STATE OF EMERGENCY IN THE
VIRGIN ISLANDS OF THE UNITED STATES
DUE TO HURRICANES IRMA AND MARIA**

Title 23, Section 1005(a), Virgin Islands Code, vests in the Governor the responsibility for meeting the dangers to the Territory of the Virgin Islands of the United States and its people presented by emergencies or major disasters.

On September 6-7, 2017, the Virgin Islands of the United States suffered devastating damage from Hurricane Irma, generating destruction of epic proportions, loss of life, damage to residential, commercial, industrial and governmental facilities in the Territory.

Title 23, Section 1005(d), Virgin Islands Code, vests in the Governor the authority to declare a State of Emergency when it is determined that an emergency or major disaster has occurred or is imminent. As the damages to the Territory were imminent due to the projected path of Hurricane Irma, the Governor of the Virgin Islands of the United States declared a State of Emergency on September 5, 2017 commencing at 12:01 a.m.

During the existing State of Emergency, the Territory of the Virgin Islands of the United States suffered extensive and devastating damage due to the passage of Hurricane Maria, a Category 5 hurricane, over the Territory, with the eye passing extremely near or over the District of St. Croix on Wednesday, September 20, 2017.

Pursuant to Title 23, Section 1005(d), the existing State of Emergency is in effect for thirty (30) days unless renewed by the Governor. As the Territory of the Virgin Islands of the United States has suffered an emergency and a major disaster due to Hurricanes Irma and Maria, the need for a state of emergency continues to exist in the Territory.

The Governor of the Virgin Islands of the United States, in order to continue to protect the lives and property of the residents of the Territory finds it necessary to renew the State of Emergency declared on September 5, 2017.

APTIM0034


Governor's Order Renewing Declaration of a State of Emergency
January 2, 2018
Page 2

NOW, THEREFORE, I Kenneth E. Mapp, Governor of the Virgin Islands of the United States, by virtue of the authority granted me by Section 11 of the Revised Organic Act of 1954, as amended, and afore-cited sections of the Virgin Islands Code, do hereby **DECLARE** as follows:

1. That the State of Emergency declared effective 12:01 a.m. on September 5, 2017 is hereby renewed, and such State of Emergency, along with all terms previously declared and ordered, shall continue in effect through February 2, 2018, unless earlier lifted or extended by Order of the Governor of the Virgin Islands of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Government of the United States Virgin Islands to be affixed at Charlotte Amalie, St. Thomas, Virgin Islands, this 2nd day of January, A.D., 2018.





Kenneth E. Mapp
Governor



THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE

Charlotte Amalie, V.I. 00802
340-774-0001

**RENEWAL ORDER AND PROCLAMATION
BY THE GOVERNOR
OF THE UNITED STATES VIRGIN ISLANDS
DECLARING A STATE OF EMERGENCY IN THE
VIRGIN ISLANDS OF THE UNITED STATES
DUE TO HURRICANES IRMA AND MARIA**

Title 23, Section 1005(a), Virgin Islands Code, vests in the Governor the responsibility for meeting the dangers to the Territory of the Virgin Islands of the United States and its people presented by emergencies or major disasters.

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Pursuant to Title 23, Section 1005(d), the existing State of Emergency is in effect for thirty (30) days unless renewed by the Governor. As the Territory of the Virgin Islands of the United States has suffered an emergency and a major disaster due to Hurricanes Irma and Maria, the need for a state of emergency continues to exist in the Territory.

The Governor of the Virgin Islands of the United States, in order to continue to protect the lives and property of the residents of the Territory, finds it necessary to renew the State of Emergency declared on September 5, 2017.


Governor's Order Renewing Declaration of a State of Emergency
August 30, 2018
Page 2

NOW, THEREFORE, I Kenneth E. Mapp, Governor of the Virgin Islands of the United States, by virtue of the authority granted me by Section 11 of the Revised Organic Act of 1954, as amended, and afore-cited sections of the Virgin Islands Code, do hereby **DECLARE** as follows:

1. That the State of Emergency declared effective **12:01 a.m. on September 5, 2017** is hereby renewed, as amended on June 28, 2018. This renewed State of Emergency shall remain in effect through **October 1, 2018** unless earlier lifted or extended by Order of the Governor of the Virgin Islands of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Government of the United States Virgin Islands to be affixed at Charlotte Amalie, St. Thomas, Virgin Islands, this 30th day of August, A.D., 2018.





Kenneth E. Mapp
Governor

APTIM0037

Exhibit 2

**FEMA-TERRITORY AGREEMENT:
FEMA-4335-DR-VI and FEMA-4340-DR-VI**

Exhibit 2. FEMA-TERRITORY AGREEMENT:**FEMA-4335-DR-VI and FEMA-4340-DR-VI**

U.S. Department of Homeland Security
 Initial Operating Facility
 8 King Street & King Cross Street
 Christiansted, U.S. Virgin Islands 00820

**FEMA****I. PURPOSE AND BACKGROUND**

On September 7, 2017, the President declared that a major disaster exists in the Territory of the U.S. Virgin Islands. This Declaration was based on Hurricane Irma (incident) beginning on September 6, 2017, and continuing (incident period). This is the FEMA-Territory Agreement (Agreement) for this major disaster, designated FEMA-4335-DR (Declaration), under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (Stafford Act), in accordance with 44 CFR § 206.44. This Agreement between the United States of America through the Regional Administrator, Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS) or his/her delegate, and the Territory of the U.S. Virgin Islands (Territory or Recipient) governs all federal assistance FEMA provides the Territory for this Declaration.

II. GENERAL PROVISIONS

- A. **GRANT AWARD PACKAGE.** Any federal grant award package issued under this Agreement will consist of the Declaration, this Agreement, and the *Application(s) for Federal Assistance* (Standard Form (SF) 424), including *Assurances- Non-Construction Programs* (SF-424B) and also the *Assurances - Construction Programs* (SF 424D) when applicable, submitted by the Territory for each grant program provided under the Declaration and this Agreement.
- B. **FEMA RESPONSIBILITIES.** FEMA may provide to the Territory or recipient of the Territory, if applicable, funds in the form of federal grant assistance or direct federal services to support the activities and programs authorized under the Stafford Act and the President's Declaration (federal assistance) in accordance with this Agreement.
- C. **TERRITORY RESPONSIBILITIES.**
 1. The Territory agrees to comply with the federal grant award terms and conditions set forth in the Declaration, this Agreement and all provisions of the Territory Administrative Plans in place for each grant award.
 2. The Territory agrees to lead, manage and drive the overall recovery process and coordinate recovery activities and technical support by setting appropriate territorial policies. The Territory will coordinate with local, Tribal and Federal governments and agencies, private businesses and nonprofit organizations to lead and coordinate territorial recovery planning and assistance to impacted communities.
 3. The Territory agrees to be the "Recipient" for all federal financial assistance provided under the Stafford Act and this Agreement, with the exception of

- 1

**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

Housing Assistance or Other Needs Assistance when administered by FEMA rather than by the Territory (i.e., the "the FEMA option") under the Individuals and Households Program, if applicable. The Territory also serves as the "pass-through entity" with respect to the Territory's role in providing subawards and administering grant assistance provided to sub-recipients.

- a. Recipient and pass-through entity have the same meaning as "Grantee," as used in governing statutes, regulations, and FEMA guidance.
 - b. A recipient is also a "non-federal entity" for grants administration purposes.
4. The Territory agrees to comply with, and will require all subrecipients to comply with, the requirements of all applicable laws and regulations, including the Stafford Act, Title 44 of the Code of Federal Regulations (CFR) (*Emergency Management and Assistance*), 2 CFR Part 3002 (implementing 2 CFR Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*)), and applicable FEMA policies and guidance.
- a. The term "subrecipient" has the same meaning as "subgrantee," as used in governing statutes, regulations, and FEMA guidance.
 - b. A subrecipient is also a "non-federal entity" for grants administration purposes.
5. The Territory is required to maintain a FEMA-approved Territory Mitigation Plan (TMP) in accordance with 44 CFR Part 201 (*Mitigation Planning*) as a condition of receiving non-emergency Stafford Act assistance.
- a. The Territory must update its TMP every five years.
 - b. The Territory must have a FEMA-approved mitigation plan to receive the following assistance:
 - i. Public Assistance (PA) – Permanent Work Categories C-G
 - ii. Fire Management Assistance Grant (FMAG) Program
 - iii. Hazard Mitigation Grant Program (HMGP)
 - c. If the Territory does not have a FEMA-approved TMP as of the date of declaration, the Territory will submit its approvable TMP within 30 days of the date of the declaration for FEMA review and approval. If the Territory fails to do so, FEMA will deny the Territory's application for PA Permanent Work and HMGP assistance under the Declaration.
 - d. FEMA will not obligate funds for PA Permanent Work or HMGP projects until the TMP is approved. FEMA will cease obligating funds for PA


Date

**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

Permanent Work or HMGP projects for open disasters during any lapse period between expiration of the current TMP and approval of an updated TMP.

D. CERTIFICATION AND WAIVERS.

1. The Territory officials named by the Governor are authorized to execute certifications and otherwise to act on behalf of and to legally bind the Territory are listed on Attachment 1 to this Agreement.
2. The Territory's Certification Regarding Lobbying is Attachment 2 to this Agreement. This certification complies with the Lobbying Prohibitions in the DHS Standard Terms and Conditions and with the FEMA regulations found at 44 CFR Part 18 (*New Restrictions on Lobbying*).
3. The Territory waives any consultation process under Executive Order 12372 (*Intergovernmental review of Federal programs*) and 44 CFR Part 4 (*Intergovernmental Review of Federal Emergency Management Agency (FEMA) Programs and Activities*) for grants, loans, or other financial assistance under the Stafford Act for this major disaster or emergency.

E. FEDERAL ASSISTANCE.

1. The Territory has requested federal assistance and submitted FEMA Form D10-8-13 (*Request for Presidential Disaster Declaration - Major Disaster or Emergency*), the terms, representations and assurances of which are incorporated by reference.
2. Federal assistance, except for assistance under the Hazard Mitigation Grant Program, is limited to activities necessary to alleviate damage, loss, hardship, or suffering resulting from the incident that took place during the incident period, except that reasonable expenses that were incurred in anticipation of and immediately preceding such event may be eligible.
3. Federal assistance under the Stafford Act and this Agreement is limited to those areas and programs designated by the President or FEMA in the Federal Register Notices for this major disaster or emergency, which are listed in Attachment 3 to this Agreement and are incorporated by reference.
4. All scopes of work and costs approved as a result of this Agreement, whether as estimates or final costs approved through subawards, project worksheets, or otherwise, will incorporate by reference the terms of this Agreement and must comply with applicable laws, regulations, policy and guidance in accordance with this Agreement.

F. CONTROLLING AUTHORITIES. This Agreement is subject to the following governing authorities:


T.L.

**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

1. The Stafford Act and its implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR), and FEMA policy and guidance.
2. "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," 2 CFR Parts 200 and 3002.
3. The Fiscal Year 2017 DHS Standard Terms and Conditions Version 7.1 Dated March 20, 2017, (available at: <http://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>), and any applicable provisions of the Buy American Act (41 U.S.C. §§ 8301 – 8305), and any other applicable statutes, regulations, or rules that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States.

III. TYPES OF FEDERAL ASSISTANCE

The following disaster assistance programs may be authorized when a declaration is issued. The specific forms of assistance authorized for this Declaration are listed in Attachment 3 to this Agreement.

- A. **PUBLIC ASSISTANCE (PA).** When the Declaration authorizes the PA Program, and FEMA makes a PA grant award to the Territory, the following terms apply:
1. The Territory agrees to make available the non-federal cost share of PA. FEMA funding will be limited to 75 percent of total eligible costs, except as may be provided for in Attachment 4, Subpart B reflecting cost share amendments to the Declaration and authorized cost share adjustments for debris removal if applicable under the conditions established in the attached Public Assistance Program Addendum for alternative procedures elected by PA applicants (subrecipients).
 2. When Direct Federal Assistance is requested and the assistance is provided:
 - a. The Territory will:
 - I. Provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work;
 - II. Hold and save the United States free from damages due to the requested work, and will indemnify the Federal Government against any claims arising from such work;
 - III. Provide reimbursement to FEMA for the non-federal share of the cost of such work; and
 - IV. Assist the performing federal agency in all support and local jurisdictional matters.
 - b. FEMA will bill the Territory for the non-federal cost share of Direct Federal Assistance provided and the Territory agrees to pay the non-

**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

federal share pursuant to the timeframes set forth in the letter or other correspondence transmitting the bill.

3. When debris removal is authorized, the Territory agrees to indemnify and hold harmless the United States for any claims arising from the removal of debris or wreckage for this major disaster or emergency. The Territory agrees that debris removal from public and private property will not occur until an unconditional authorization for the removal of debris is provided.
4. The attached Public Assistance Programmatic Addendum includes additional terms and conditions for the implementation of the PA Program as applicable, PA grant performance goals, and cost share adjustments under alternative procedures for debris removal.

II. INDIVIDUAL ASSISTANCE (IA). When the Declaration authorizes IA overall or specific IA programs, and FEMA makes an IA grant award to the Territory, the following terms apply as applicable:

1. FEMA may award grant funds to the Territory for the IA programs authorized under the Declaration and requested by the Territory.
2. When the Declaration authorizes the Individual and Households Program (IHP), and FEMA provides IHP assistance including Other Needs Assistance (ONA) to individuals and households, the Territory agrees to make available its 25 percent share of any ONA that is provided under Section 408(e) of the Stafford Act (42 U.S.C. § 5174(e)).
 - a. When FEMA administers ONA under the FEMA Option, FEMA will bill the Territory monthly for the cost share. The Territory agrees to pay the amount billed within 30 days of receipt.
 - b. If the Territory administers ONA under the Joint Option, a Cooperative Agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individual recipients and administrative costs allowed under Section 408 of the Stafford Act (42 U.S.C. § 5174).
 - c. If the Territory administers ONA under the Territory Option, an ONA Grant Agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individual recipients and administrative costs allowed under Section 408 of the Stafford Act (42 U.S.C. § 5174).
3. Additional terms and conditions regarding implementation of the IHP and other applicable Individual Assistance (IA) Programs, including IA Grant performance goals, may be included in an attached IA Programmatic Addendum.



FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI

- C. HAZARD MITIGATION GRANT PROGRAM (HMGP). When the Declaration authorizes the HMGP, and FEMA makes a HMGP award to the Territory, the following provisions apply:
1. Total federal contributions are based on the estimated aggregate amount of grants to be made under the Stafford Act for this major disaster (less any associated administrative costs), and will be 15 percent for the first \$2,000,000,000 or less of such amounts; 10 percent of the portion of such amounts over \$2,000,000,000 and not more than \$10,000,000,000; and 7.5 percent of the portion of such amounts over \$10,000,000,000 and not more than \$35,333,000,000.
 2. The Territory agrees to make available the non-federal share of HMGP. FEMA funding will be limited to 75 percent of total eligible costs.
 3. If the Territory requests and FEMA approves the Territory's request for inclusion in the Program Administration by States (PAS) Pilot Program, an Operating Agreement will be executed and included in an attached HMGP Programmatic Addendum.
 4. Additional terms and conditions regarding implementation of HMGP, including performance goals, may be included in an attached HMGP Programmatic Addendum.

IV. FUNDING

A. PAYMENT PROCESS.

1. FEMA will pay the Territory using the U.S. Department of Health and Human Services Payment Management System (HHS/Smartlink).
2. Payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205 (*Rules and Procedures for Efficient Federal-State Funds Transfers*) and Treasury Financial Management Manual, Volume I, Part 4A-2000.
3. FEMA will use a "single obligation" system to process payments through a subaccount for each subaward. When FEMA identifies an overpayment, subject to the exhaustion of appeals, FEMA will deobligate the funds from the subaccount. If there are insufficient funds in the subaccount, the Territory will have 30 days to reimburse the HHS/Smartlink subaccount. At that time, if there are still insufficient funds in the subaccount, FEMA will refer the amount to the FEMA Finance Center (FFC) for collection.
4. The Territory and subrecipients have no property interest in the funds made available through the HHS/Smartlink account. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the Territory in

FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI

HHS/Smartlink due to grant amendments, partial or full grant terminations, closeouts, or other reasons.

- B. AVAILABILITY OF FUNDING. FEMA and the Territory agree to take measures to deliver assistance to individuals, households, governments and private nonprofits as expeditiously as possible, consistent with federal laws and regulations. To that end, the following terms and conditions apply:
1. This Agreement does not comprise an award of any type of assistance authorized for the Declaration or as described in Part III, Types of Federal Assistance, above and this Agreement does not obligate any federal funding. Rather, FEMA will separately make such award decisions for the assistance authorized for the Declaration.
 2. If FEMA decides to make an award of federal assistance, such assistance will be made available within the limits of funds available from Congressional appropriations for such purposes.
 3. FEMA may, in its sole discretion, if necessary because of limited funds, give first priority to assistance for individuals and households, emergency work for protection of public health and safety, and administrative costs for managing the disaster programs. FEMA will pay public assistance recovery claims, and hazard mitigation, when, and if, funds become available and will provide them in the order the claims are received.

V. REPORTING

A. FEDERAL FINANCIAL REPORTS.

1. Initial and Quarterly Financial Reports. The Territory shall submit complete and accurate Federal Financial Reports (Standard Form 425) to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date for each program (PA, HMGP, and the various IA programs). The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the Territory. Subsequent reporting requirements shall not be waived. The Territory shall submit quarterly financial status reports thereafter until closeout of the federal grant award for each program funded. Reports are due on January 30, April 30, July 30, and October 30.
2. Subrecipient Final Financial Report.
 - a. Requirements. After the Territory has submitted all payment of claim information and certifications as required in applicable regulations, including 44 CFR § 206.205 for PA and § 206.438(d) for HMGP, for all projects approved under a grant program for a particular subrecipient, the



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**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

Territory will note in the remarks section of its next quarterly financial report:

- i. That the report represents the final expenditures for a particular subrecipient;
 - ii. The name of that subrecipient; and
 - iii. The date on which the recipient submitted to FEMA a payment of claim for each of that subrecipient's approved projects, or reference to other document submitted to FEMA that includes this information.
- b. Confirmation. FEMA will confirm the quarterly SF 425 as the final expenditure report for that subrecipient only if the Territory has submitted all outstanding information and certifications required by applicable regulations and FEMA policy and guidance for all the subrecipient's costs and work for the major disaster or emergency.
- c. Governmental Subrecipients. This confirmed, complete and accurate quarterly report is the final expenditure report for a governmental subrecipient's final expenditures for the particular grant program for the major disaster or emergency for the purposes of Section 705(a) of the Stafford Act (42 U.S.C. § 5205(a)).
3. Final Financial Report. The Territory shall submit a complete and accurate final Federal Financial Report (SF 425), no later than 90 days after each program's federal grant award performance period expiration date. This report is the final expenditure report reflecting the Territory's total expenditures by program under the federal award for the disaster or emergency for purposes of Section 705(a) of the Stafford Act (42 U.S.C. § 5205(a)).

B. PERFORMANCE REPORTS.

1. Initial and Quarterly Reports. The Territory shall submit performance/progress reports in compliance with each program identified under this Agreement to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date. The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the grantees. Subsequent reporting requirements shall not be waived. The Territory shall submit quarterly performance/progress status reports thereafter until the grant performance period ends. Reports are due on January 30, April 30, July 30, and October 30.
2. The Territory shall include in its quarterly performance/progress reports (OMB Form 1660-0017 PA and OMB Form 1660-0076 HMGP for PA and HMGP, respectively) a status of project/subaward completion, amount of expenditures, and


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**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

amount of payment for advancement or reimbursement of costs for each project/subaward funded under each of the programs authorized under this Agreement, including for properties purchased for open space under the HMGP. The Territory shall submit project overruns requiring additional obligations to FEMA for review and approval prior to incurring costs.

3. **Final Performance Report.** The Territory shall submit a final performance/progress report 90 days from each program's grant award performance period expiration date that addresses all approved activities and the performance goals outlined in the federal award.

C. PROJECT CLOSEOUT.

1. **Project Closeout Report:** Within 180 days from the date the Territory or a subrecipient completes each project, the Territory shall submit a payment of claim to FEMA as required by FEMA regulations and guidance, including 44 CFR § 206.205 for PA and § 206.438(d) for HMGP.
2. **Project Reporting:** The Territory shall indicate on the quarterly performance/progress report each time a subrecipient has completed a project.

- D. ENFORCEMENT.** FEMA may suspend drawdowns, provide other special conditions or take other authorized action pursuant to 2 CFR § 200.338 (*Remedies for Noncompliance*) if the Territory does not submit accurate and timely reports.

E. RECORDS RETENTION.

1. **Territory Requirement.** The Territory will retain records for 3 years, except in certain rare circumstances described in 2 CFR § 200.333 (*Retention requirements for records*), from the date it submits the final Federal Financial Report (SF 425), to FEMA in compliance with 2 CFR § 200.333, notwithstanding the time period prescribed for subrecipients in subsection 2, Subrecipient Requirement, below.
2. **Subrecipient Requirement.** The Territory will require subrecipients to retain records for 3 years from the date that the Territory submits to FEMA the final expenditure report for the program in question, as described above in Part V, Reporting, Section A, Federal Financial Reports, Subsection 2, Subrecipient Final Financial Report, for that subrecipient.

VI. RECOVERY OF FUNDS

- A. IN GENERAL.** This agreement does not limit FEMA's right to disallow costs and recover funds based on a later audit or review during or after performance of the award to ensure compliance with the terms of the Agreement and award document, or the obligation of the recipient to return such funds, including funds paid to any subrecipient. Pursuant to the Debt Collection Improvement Act, as amended, and subject to section 705 of the Stafford Act (42 U.S.C. § 5205(a)), the recipient is liable to repay funds to

**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

FEMA if the recipient or subrecipient has ineligible underruns (for example, actual costs are less than the amount FEMA awarded based on initial estimates), knowingly or negligently withholds or misrepresents material information, or fails to complete work and comply with the terms of this Agreement or the approved award; or as a result of federal funds expended in error; or for costs that are unreasonable or otherwise disallowed. Upon adjudication of any other aforementioned conditions, a debt is established. FEMA and the Territory will follow the reimbursement procedures provided above in Part IV, Funding, Section A, Payments.

B. DUPLICATION OF BENEFITS

1. **General.** The Territory shall take all actions necessary and reasonable to ensure that all who receive federal assistance are aware of their responsibility to repay federal assistance that is duplicated by amounts available from insurance or any other source for the same purpose. FEMA may at any time pre-award or post-award adjust the level of funding provided to account for financial assistance provided from any other source for the same purpose as the federal assistance, or to account for benefits available for the same purpose from another source.
2. **Insurance.** Within his/her authorities, the Governor shall ensure, through the territorial agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster survivors and others who receive federal assistance. The Territory shall also take all reasonable steps to ensure that disaster survivors are aware of procedures for filing insurance claims, and are informed of any territorial procedures instituted for assisting insured disaster survivors.

C. COOPERATION. The Territory agrees, on its behalf and on behalf of its political subdivisions and others that receive federal assistance, to cooperate with the Federal Government in seeking recovery of federal assistance against any party or parties whose intentional acts or omissions or whose negligence or other tortious conduct may have caused or contributed to the damage or hardship for which federal assistance was provided under this Agreement. If applicable, FEMA will treat recovered funds as duplicated benefits available to the recipient/ subrecipient in accordance with Section 312 of the Stafford Act (42 U.S.C. § 5155).

D. TERRITORY RESPONSIBILITIES. The Territory is responsible for the recovery of federal assistance expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.

1. The Territory shall adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF 425.
2. The Territory shall designate on its PA and HMGP quarterly progress reports the applicants/subrecipients from which they have not processed recoveries but from which recoveries are due FEMA.




FEMA-TERRITORY AGREEMENT
FEMA-G35-DR-VI

XII. SIGNATURES AND EFFECTIVE DATE

- A. **COUNTERPART SIGNATURES.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a .pdf format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or .pdf signature page were an original thereof.
- B. **EFFECTIVE DATE.** This FEMA-Territory Agreement becomes effective on the date of signature by the last Party.

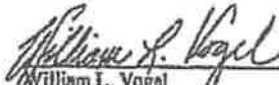
Agreed:



Kenneth E. Mapp
Governor

9-15-17

Date



William L. Vogel
Federal Coordinating Officer

09/16/2017

Date



FEMA-TERRITORY AGREEMENT
FEMA-3389-EM-VI

ATTACHMENT 1
LIST OF TERRITORY CERTIFICATION OFFICERS

1. The Governor hereby certifies that Valdemir Collens is the Governor's Authorized Representative (GAR) empowered to execute on behalf of the Territory all necessary documents for federal assistance, including approval of subawards and certification of claims for Public Assistance. Dias Leroy is the Alternate Governor's Authorized Representative (AGAR) and is similarly empowered. Their signatures are as follows:


Valdemir Collens, GAR


Dias Leroy, AGAR

2. The Governor hereby certifies that Mona Barnes is the Territory Coordinating Officer (TCO) and Deborah J. Howell is the Alternate TCO, who will act in cooperation with the Federal Coordinating Officer under this Declaration.
3. The Governor hereby certifies that Mona Barnes is the representative of the Territory authorized to receive donations or loans of surplus property on behalf of the Territory and to execute certification, agreements, and other necessary documents with regard thereto.
4. The Governor hereby certifies that Mona Barnes is the Territory official authorized to execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in full compliance with FEMA nondiscrimination regulations (44 CFR Part 7, *Nondiscrimination in Federally-Assisted Programs* and 44 CFR § 206.11, *Nondiscrimination in disaster assistance*).
5. The Governor hereby certifies that Mona Barnes is the Territory official who will execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Restrictions on approval authority of the above named officials: None

Agreed: 
Kenneth E. Mapp
Governor

9-11-17
Date

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FEMA-TERRITORY AGREEMENT
FEMA-339-RM-VI

ATTACHMENT 2
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 CFR Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L.L.L., *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Yekemier Collins

Name and Title of Authorized Representative


Signature

Date

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**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

ATTACHMENT 3

LIST OF DESIGNATED AREAS AND PROGRAMS

Individuals on the islands of St. John and St. Thomas are eligible to apply for Individual Assistance.

Eligible applicants within all of the islands of the Territory of the U.S. Virgin Islands are eligible to apply for debris removal and emergency protective measure (Categories A and B), including direct Federal assistance, under the Public Assistance program.

Eligible applicants within all of the islands of the Territory of the U.S. Virgin Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

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**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

**ATTACHMENT 4
AMENDMENTS**

[This attachment is a placeholder to be added to and modified to reflect changes to the cost share, incident period, designated areas, designated officials, etc., that are authorized after the original FEMA-Territory Agreement is signed.]

Subpart A: List of Amendments (including listing amendments to the Declaration that are not reflected as amendments to the Agreement)

Subpart B: Cost Share Amendments

Subpart C: Amendments to the Incident (Type and Period)

Subpart D: Other Amendments: not otherwise reflected in Attachments 1 (List of Territory Certification Officers) or 3 (List of Designated Programs and Areas) and including Amendments to the Declaration that are not reflected as amendments to the Agreement

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**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

PUBLIC ASSISTANCE PROGRAMMATIC ADDENDUM

SUBPART A: PA GRANT PERFORMANCE GOALS
(TBD per new requirements in 2 CFR § 200.210)

PA-1



APTIM0054

**FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

INDIVIDUAL ASSISTANCE PROGRAMMATIC ADDENDUM

SUBPART A: IA GRANT PERFORMANCE GOALS
(TBD per new requirements in 2 CFR § 100.210)

IA-1


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**FEMA-TERRITORY AGREEMENT
FEMA-035-DR-VI**

HAZARD MITIGATION PROGRAMMATIC ADDENDUM

SUBPART A: HMGP PERFORMANCE GOALS

The key purpose of HMGP is to ensure that the opportunity to take critical mitigation measures to reduce the risk of loss of life and property from future disasters is not lost during the reconstruction process following a disaster. To achieve this, Territories must use their HMGP funding as soon as possible to support the development and update of territorial and local hazard mitigation plans and the completion of hazard mitigation projects based on the Territorial, Tribal and local Hazard Mitigation plan.

The milestone described below will allow FEMA to assess the performance of the Territory in taking advantage of reconstruction opportunities after a disaster, making the entire Territory more sustainable.

Territory HMGP Award Performance Metric

1. All progress reports must be complete and submitted on time. Information in reports must accurately describe award and subaward activities, including data related to the completion of individual property acquisitions. Incomplete progress reports which do not provide information on all open awards and subawards or include all information required by the program guidance are not considered on-time.
2. All Federal Financial Reports (FFR), Standard Form (SF) SF-425 are submitted on time.

HMGP-1



APTIM0056



U.S. Department of Homeland Security
FEMA-4335/4340-DR-VI
Joint Field Office
184C Pepper Tree Road
St. Croix, VI 00830

FEMA

**AMENDMENT NUMBER 9 TO
THE FEMA-TERRITORY
AGREEMENT
FEMA-4335-DR-VI**

**INDIVIDUAL ASSISTANCE
PROGRAMMATIC ADDENDUM**

This is Amendment Number 9 to the FEMA-Territory Agreement for major disaster FEMA-4335-DR-VI, declared on September 7, 2017. This Amendment serves to add to the FEMA-4335-DR-VI Individual Assistance (IA) Programmatic Addendum, Subpart C: *Permanent Housing Construction (PHC) Repair*, which was approved for this major disaster on November 15, 2017.

Paragraph IX. B. of the FEMA-Territory Agreement is hereby amended to add:

Individual Assistance Programmatic Addendum

- **Subpart C: *Permanent Housing Construction - Repair***

The terms and conditions of Individual Assistance Programmatic Addendum Subpart C are hereby incorporated by reference into this Amendment 9 to the FEMA-Territory Agreement for major disaster DR-4335-FEMA-VI.

All other paragraphs of this Agreement remain unchanged, unless previously amended.

AGREED:


Kenneth E. Mapp
Governor


William L. Vogel
Federal Coordinating Officer
Disaster Recovery Manager

12-05-17
Date

12/06/2017
Date



APTIM0057

U.S. Department of Homeland Security
FEMA-4335-DR-VI
East Field Office
1840 Poplar Tree Road
Newport, VI 01885-2000



FEMA

**AMENDMENT NUMBER 9 TO
THE FEMA-TERRITORY
AGREEMENT
FEMA-4335-DR-VI**

**INDIVIDUAL ASSISTANCE
PROGRAMMATIC ADDENDUM**

This is Amendment Number 9 to the FEMA-Territory Agreement for major disaster FEMA-4335-DR-VI, declared on September 17, 2017. This Amendment serves to add to the FEMA-4335-DR-VI Individual Assistance (IA) Programmatic Addendum, Subpart C, *Permanent Housing Construction - Repair*, which was approved for this major disaster on November 15, 2017.

Paragraph IX. D. of the FEMA-Territory Agreement is hereby amended to add:


- Individual Assistance Programmatic Addendum
 - Subpart C, *Permanent Housing Construction - Repair*

The terms and conditions of Individual Assistance Programmatic Addendum Subpart C, are hereby incorporated by reference into this Amendment 9 to the FEMA-Territory Agreement for major disaster DR-4335-1 MAYA.

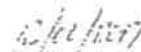
All other paragraphs of this Agreement remain unchanged, unless previously amended.

WITTED


Kenneth E. Mapp
Governor


William L. Vogel
Federal Coordinating Officer
Disaster Recovery Manager

12-01-17
Date


Date

APTIM0058

**AMENDMENT NUMBER 1 TO THE FEMA-TERRITORY AGREEMENT
FEMA-4335-DR-VI**

**FEMA-TERRITORY
AGREEMENT
FEMA-4335-DR-VI**

INDIVIDUAL ASSISTANCE PROGRAMMATIC ADDENDUM

**SUBPART C: PERMANENT HOUSING
CONSTRUCTION - REPAIR**

PREVAILING TERMS AND CONDITIONS

Individual Assistance, including the Individuals and Households Program (IHP) under Stafford Act Section 408 (42 U.S.C. § 5174), has been designated for this major disaster declaration, FEMA-4335-DR-VI, which was declared on September 7, 2017. Based on the damage resulting from the incident, FEMA determined that a lack of available housing resources existed in and around the declared area, and authorized temporary direct housing assistance under IHP for eligible applicants. Stafford Act Section 408(c)(1)(B)(i), 42 U.S.C. § 5174(c)(1)(B)(i). FEMA has further determined that, based on the facts presented, the conditions precedent for Permanent Housing Construction (PHC) - Repair have been met for DR-4335-VI and DR-4340-VI.

FEMA and the Territory agree to the following terms and conditions regarding the implementation of Permanent Housing Construction-Repair under this declaration:

1. In accordance with the Stafford Act, temporary direct housing assistance shall be provided for a period of up to 18 months from the date of the Presidential declaration. Stafford Act Section 408(c)(1)(B)(ii), 42 U.S.C. § 5174(c)(1)(B)(ii)
2. For this declaration, the 18 month period of assistance ends on March 7, 2019.
3. If necessary, because of extraordinary circumstances, at the written request of the Territory, FEMA may extend the 18 month period of assistance for temporary direct housing assistance if an extension is in the public's interest. The Territory will request an extension, if needed, between 90 and 120 days before the end of the period of assistance. Stafford Act Section 408(c)(1)(B)(iii), 42 U.S.C. § 5174(c)(1)(B)(iii)
4. FEMA, in coordination with the Territory, will work with applicants to repair owner occupied homes.


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**ADDENDUM NUMBER 9 TO THE FEMA-TERRITORY AGREEMENT
FEMA-4345-DR-VI**

5. Pursuant to Section 408(c)(4) of the Stafford Act, FEMA may provide permanent housing construction in the form of direct repairs in insular areas and other locations in which no alternative housing resources are available, and temporary housing assistance is unavailable, infeasible, or not cost-effective.
6. PHC-Repair authority for DR-4335-VI and DR-4340-VI is limited to direct repairs to intact structures. New construction is not authorized.
7. FEMA shall ensure that the owner occupants do not receive temporary housing assistance if they receive PHC-Repair assistance.
8. Pre-disaster renters shall not be eligible for PHC-Repairs.
9. The individual or household will be required to enter into an agreement with FEMA outlining eligibility and conditions for participation in PHC-Repairs.
10. If an individual or household has received FEMA housing assistance (e.g., repair or replacement assistance) for this event, the household must return funding determined to be a duplication of benefits to FEMA prior to construction.
11. In accordance with 44 CFR 206.110(k), individuals or households located in a Special Flood Hazard Area (SFHA) must agree to obtain and maintain flood insurance, as required in 43 U.S.C. 4012a, for at least the amount of federal financial assistance.

REFERENCES:

Stafford Act Section 408, 42 U.S.C. § 5174

44 C.F.R. §§ 206.110 - 206.118

Individuals and Households Program Unified Guidance (IHPUG), FPMR 104-009.3

September 30, 2016


APTIM0060

U.S. Department of Homeland Security
Joint Field Office - FEMA-4335/4340-DR-VI
76 & 711 Estate Diamond, 184C Pepper Tree Road
Charlottesville, VA 22902



FEMA

December 9, 2017

Governor Kenneth E. Mapp
Office of the Governor
Government House
Charlotte Amalie, VI 00802

Re: Sheltering and Temporary Essential Power (STEP) Program for FEMA-4335-DR-VI and
FEMA-4340-DR-VI

Dear Governor Mapp:

Thank you for your letter of November 29, 2017, requesting a clarification or modification to the Sheltering and Temporary Essential Power (STEP) Pilot Program for the Territory of the Virgin Islands of the United States, under FEMA-4335-DR-VI and FEMA-4340-DR-VI, approved on November 17, 2017.

After reviewing the STEP Pilot Program, FEMA has amended the Program. Section VII.H has been amended to clarify that work necessary to provide essential electrical supply is eligible for reimbursement under the STEP Pilot Program.

Please feel free to contact me if you have any questions or need additional information concerning the STEP Pilot Program.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Vogel".

William L. Vogel
Federal Coordinating Officer
Disaster Recovery Manager
FEMA-4335/4340-DR-VI

Enclosure: FEMA Recovery Program Guidance, Sheltering and Temporary Essential Power (STEP) Pilot Program for FEMA-4335-DR-VI and FEMA-4340-DR-VI, December 8, 2017.

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APTIM0061



FEMA RECOVERY PROGRAM GUIDANCE

**I. TITLE: Sheltering and Temporary Essential Power (STEP)
Pilot Program for FEMA-4335-DR-VI and FEMA-4340-DR-
VI**

II. DATE: December 8, 2017

III. PURPOSE:

The Territory of the U.S. Virgin Islands (Territory) experienced extreme wind and flooding events beginning on September 5, 2017 with Hurricane Irma and September 19, 2017 with Hurricane Maria. The Territory has experienced moderate to severe damage to residences displacing residents and overwhelming sheltering and temporary housing resources in the affected area. To address this need, FEMA is authorizing Public Assistance funding under Section 403 of the Stafford Act for a Sheltering and Temporary Essential Power (STEP) Pilot Program to enable the Territory to perform minor emergency repairs in single-family owner-occupied residences. Where safe and practicable, STEP may enable residents to return to or remain in their homes as a form of shelter while permanent repairs are completed, thereby reducing the number of individuals in congregate shelters or requiring assistance through the Transitional Shelter Assistance (TSA) Program. STEP will also return survivors and communities to normalcy by allowing schools serving as shelters to re-open, hastening the pace of overall community recovery.

IV. OBJECTIVES:

- A. STEP is intended as a life safety measure, to protect public health and safety, to protect property, and to enable survivors to shelter at home. STEP provides an alternative emergency sheltering option to address needs not met through congregate sheltering and the TSA Program or other forms of sheltering assistance due to capacity issues (e.g., lack of available hotels/motels or other longer term sheltering options that would afford a higher degree of privacy than congregate shelters). It is also meant to minimize the disruption of communities by enabling the Territory to help survivors shelter in their own homes when safe and appropriate.
- B. FEMA will deliver the STEP program through reimbursement to the Territory. Prior to starting work, the Territory must provide the legal authority for the Territory to assert legal responsibility to enter private property to perform emergency work. Once the legal authority has been established, FEMA will reimburse eligible costs, subject to



FEMA RECOVERY PROGRAM GUIDANCE

any applicable cost share for Public Assistance (PA) Category B, Emergency Work, for a STEP program administered by the Territory. In the event of any cost share adjustment, the cost share for STEP activities will be set at the prevailing rate on the date the work is performed. The Territory will perform or contract for the performance of authorized emergency protective measures. Individual residential property owners are not eligible for reimbursement under STEP and the Territory may not provide funding to individual residential property owners under STEP.

V. **SCOPE AND AUDIENCE:** This policy is limited to FEMA-4335-DR-VI and FEMA-4340-DR-VI and is intended to guide all FEMA personnel responsible for providing STEP assistance.

VI. **AUTHORITY:** Section 403, 42 U.S.C. 5170b(a)(3)(B) and (D), and 5170b(a)(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended.

VII. POLICY:

A. STEP is for disaster-damaged single-family owner occupied residential properties only, to include duplexes and townhomes. Other types of owner occupied residences may only be approved by the Federal Coordinating Officer (FCO) on a case-by-case basis and supported by written justification from the Territory to include feasibility and cost effectiveness. Commercial properties and commonly owned areas, structures, or equipment are not eligible for removal, maintenance, repair, or replacement under this program.

B. The Territory is authorized to administer STEP throughout the entire Territory.

C. Within 45 days from the date of issuance of this policy and prior to beginning work, the Territory must demonstrate it has the legal responsibility to undertake the proposed actions in response to the sheltering need by providing to FEMA the legal authority under which the emergency work will be performed. Note that legal authorities regarding police powers are general in nature and may not be specific enough to demonstrate legal responsibility.

D. Within 90 days from the date of issuance of this policy, for each property where STEP repairs are performed, the Territory must obtain a Right of Entry (ROE) from each property owner on a form approved by FEMA. The ROE allows FEMA and the Territory, or authorized contractors and representatives access to the property, in addition to the

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D.L.



FEMA RECOVERY PROGRAM GUIDANCE

ROE, the Territory must obtain a signature from the property owner agreeing to participate in STEP and an approved proof of ownership. A sample ROE and participation agreement is included in this policy as an appendix. Property owners interested in participating in STEP that sign the ROE and participation agreement are also required to register for FEMA assistance.

- B. All STEP work must be completed within six months of the date of the major disaster declaration (FEMA-4340-DR-VI). STEP work will not be initiated on a property without the submission of:

1. Signed ROE;
2. Signed participation agreement;
3. Approved proof of ownership; and
4. A FEMA Registration Number, even if the homeowner is not eligible for Individual Assistance.

- F. Starting no later than 14 calendar days after the Territory begins executing emergency work under STEP, the Territory must provide a weekly electronic report to include:

1. The aggregate number of ROEs/participation agreements obtained;
2. The number of properties in the inspection process;
3. The number of properties where work is initiated;
4. The number of properties where work is complete; and
5. The number of properties withdrawn or determined ineligible based on inspection.

On a weekly basis the Territory must provide an electronic report with the following information on residences that received assistance under STEP:

1. The property owner's name and address;
2. The property owner's FEMA Registration Number;
3. When the ROE and participation agreement for STEP was obtained;
4. When the work was initiated;
5. When work was completed;
6. The cost of the emergency work;
7. Scope of the emergency repair work; and
8. The contractor(s) performing the emergency work.

A reporting template is included in this policy as an appendix. The FCO will establish a transmission method for electronic reports. Changes to the reporting requirements will be

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FEMA RECOVERY PROGRAM GUIDANCE

mutually agreed upon by the FCO and Territorial Coordinating Officer or Governor's Appointed Representative.

- G. Emergency work performed through STEP is the sole responsibility of the Territory. Contractors performing emergency work under STEP are hired by and represent the Territory. FEMA makes no warranties of any sort for any assessments or temporary emergency repair work undertaken pursuant to this program.
- H. Eligible emergency work under STEP is capped at \$25,000. The FCO may waive the cap on a case-by-case basis for owner occupants with access and functional needs or if the Territory documents and demonstrates unforeseen or extraordinary circumstances after work commences that justify a reasonable increase in costs associated with work necessary to make a home safe for sheltering purposes. The emergency work must be reasonable, necessary, and include evaluation of low cost options to make the home safe and accessible for sheltering purposes. If a home cannot be made safe and accessible for sheltering purposes for less than the cap, the property is not eligible for STEP assistance. Additionally, if it is determined that a home is not suitable to safely shelter in-place due to the presence of toxic or hazardous materials, that property is not eligible for STEP assistance.

Under STEP, FEMA provides funding for basic, minimal work to survivors' homes to allow survivors to shelter in-place for an extended period. Stafford Act Section 403 is not a repair program, but an authority to provide emergency assistance for life sustaining and public health and safety needs. Consequently, the work under STEP is meant to provide the most basic, life sustaining needs for emergency sheltering, and homes that cannot be made safe for sheltering with this minimal work are not eligible for STEP. Additionally, all work under STEP must comply with applicable Territorial and federal codes, and may include:

1. Work necessary to provide essential electrical supply, HVAC (if in place prior to the event), and hot water;
2. Work necessary to restore natural gas or propane supply if required for hot water, and/or food preparation;
3. Work necessary to provide potable water supply, including work necessary to repair cisterns - this may include well decontamination if only source of potable water;
4. Work necessary to repair or replace damaged window or wall mounted air conditioning unit(s) and ceiling fans;
5. Weatherproofing to include roof, wall, and windows;
6. Securing or replacing broken windows, and repair or replacement of

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FEMA RECOVERY PROGRAM GUIDANCE

- nonfunctioning exterior and/or necessary interior doors;
7. Removal of disaster-related debris to curbside necessary to safely enter, inspect, and perform eligible emergency work, and safely shelter in place;
 8. Minor interior and/or exterior work to provide safe access (e.g., stairs, ramps) and living environment;
 9. Repair or replacement of damaged drywall to a level where it removes a threat to health and safety, for the purpose of safely covering any exposed electrical work, or to ensure the home is properly insulated;
 10. Removal and replacement of damaged floor substructure and floor covering using least costly alternative, if necessary;
 11. Ensure one useable bathroom vanity, sink, shower or tub, toilet, and tank;
 12. Ensure functional kitchen facilities to include minimal cooking and refrigeration appliances necessary to shelter in place and/or meet fridges for doctor prescribed medical needs;
 13. Ensure safe sleeping accommodations for all household members;
 14. To a reasonable level, clean and sanitize mold and dirt in the interior of a residence, including duct work, if necessary; and
 15. Items and work necessary to ensure safe shelter for individuals with disabilities or access and functional needs.
- I. Any inspections for code compliance or safety necessary to accomplish work eligible under this program are also eligible for funding and not subject to the cap.
- J. Project management and oversight activities as well as Territorial direct administrative costs are eligible and not subject to the cap. Project management activities may include a call center to register impacted home owners, inspections, data and document collection, auditing of contractor documentation, outreach, contract monitoring and administration, quality assurance and quality control, and reporting.
- K. To be appropriate for STEP, a residence must:
1. Be located within the Territory of the U.S. Virgin Islands;
 2. Be structurally sound such that authorized emergency work can be safely made, and with no impediments blocking access to the dwelling;
 3. Be reasonably able to serve as a suitable long term shelter upon completion of the emergency work authorized under this program; and
 4. STEP participants must obtain a FEMA Registration Number by completing the registration process for FEMA assistance. This will allow FEMA to more effectively track and monitor STEP participants.

A handwritten signature in black ink, appearing to be "R. L.", located in the bottom right corner of the page.



FEMA RECOVERY PROGRAM GUIDANCE

L. Territorial Requirements

1. The Territory will provide the legal authority under which emergency work is performed within 45 days of the date of issuance of this policy.
2. The Territory or its program management contractors will perform all project management activities to include oversight and monitoring of damage assessments, work, code compliance, safety inspections, and ensure occupancy requirements are met for all properties.
3. The Territory or its contractors will obtain a signed ROE and accompanying participation agreement within the timeframe established above from each residential property owner for the type of work to be performed.
4. The Territory is responsible for obtaining, accelerating, and facilitating the issuance of any and all permits required to complete the eligible work, and will arrange, accelerate, and facilitate any and all inspections required by Territorial law, and obtain clearance for temporary occupancy for each property.
5. The Territory will ensure the owner recognizes and certifies their understanding that participation in STEP will make a FEMA Individuals and Households Program (IHP) applicant ineligible for temporary housing assistance, except in limited circumstances, or further TSA or other FEMA sheltering assistance, if authorized, once emergency work is complete and the residence is cleared for occupancy.
6. The Territory must comply with the Federal procurement standards for federal awards in 2 CFR 200.317-326. The Territory will provide FEMA the opportunity to review the procurement plan to provide for this work. The deadline for review will be determined by the FCO in coordination with the Territory.
7. The Territory, or its contractors, will obtain documentation to verify primary residence and ownership as follows:
 - a) Primary residence
 - i. Utility Bill,
 - ii. Merchant's statement,
 - iii. Driver's license,
 - iv. Voter's registration card, or
 - v. Employer's statement such as a wage or earning statement;AND
 - b) Home Ownership Verification
 - i. Structural Insurance,
 - ii. Tax Bill or other tax records available through the tax office,
 - iii. Official's records (notarized document confirming long-term



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ownership or an original deed or deed of trust to the property listing the applicant as the legal owner;

- iv. Mortgage Payment Book,
- v. Affidavit, or
- vi. Title number after viewing and official government document verifying the home address and applicant to own the dwelling.

8. The Territory will submit to FEMA (frequency and means of transmission to be established by the FCO) the supporting documentation below for each property to include:

- a) Owner/occupant's name and address;
- b) FEMA Registration Number;
- c) Right of entry;
- d) Flood and/or homeowners insurance policy or other applicable insurance or certification of no insurance;
- e) Photos of damage;
- f) Damage description and scope of work required;
- g) Work orders for each property describing costs and specific work performed at the property (start and stop dates of work must be included); and
- h) That the home can be made safe for shelter purposes for less than the established cap, and there is no presence of toxic or hazardous materials in the property.

9. The Territory, in coordination with FEMA, will produce communications products about the program for survivors and contractors performing emergency work under STEP that emphasizes the limitations of the program and the emergency nature of repairs. Additionally, the role of contractors as a hired asset of the Territory will be clearly delineated in all communications products.

M. Effect on Other Assistance.

1. STEP assistance is an emergency protective measure provided under Section 403 of the Stafford Act to support efforts to save lives and protect public health and safety, including the provision of emergency sheltering; therefore, STEP emergency protective measures do not affect a FEMA IHP applicant's eligibility for repair, replacement, or permanent or semi-permanent housing construction assistance, if approved, under Section 408 of the Stafford

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Act and its implementing regulations. Upon receiving STEP, an applicant may only receive continued rental assistance or direct housing assistance, on a case-by-case basis, when the FCO determines the assistance is appropriate based upon the following factors:

- a. Household composition, including the size of the household as well as the number of household members who are children, elderly, individuals with disabilities, or have access and functional needs.
- b. There are safety concerns related to occupancy while permanent repairs are being made.

2. Any residence that receives assistance under the U.S. Army Corps of Engineers' Operation Blue Roof Program or under the U.S. Virgin Island's Turping Program will not be eligible for further roof repair under STEP unless the work is necessary to facilitate electrical power restoration.

3. Participation in STEP will make a FEMA IHP applicant ineligible for further TSA or other FEMA sheltering assistance, if authorized, once emergency work is completed and the home is approved for sheltering occupancy.

4. If a STEP participant refuses to return home once the scope of work for emergency repairs is completed and the property has been cleared to safely shelter in-place then the individual is no longer eligible for TSA. If the scope of emergency work is not properly completed, the STEP participant may be eligible for further TSA.

N. Following the completion of the STEP mission, FEMA will conduct a satisfaction survey of all STEP participants to capture best practices, lessons learned, and inform and improve future implementation of the program.

O. Removal of debris off of a property beyond the public right-of-way is not covered under STEP. For information on debris removal from private property, see FEMA's Public Assistance Program and Policy Guide dated April 1, 2017.

VIII. ATTACHMENTS:

Right of Entry (ROE) Sample Form
Data Collection Template

A handwritten signature in black ink, appearing to be "J. J. J." or similar, with a stylized flourish.

7.1



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IX. **ORIGINATING OFFICE:** Recovery Directorate.

X. **REVIEW DATE:** This policy is in effect from the date in paragraph II above for these events.

A handwritten signature in black ink, appearing to read "Alex Amparo", is written over a horizontal line.

Alex Amparo
Assistant Administrator
Recovery Directorate

12/8/2017

Date

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A handwritten signature in black ink, possibly reading "J. L.", is written in the bottom right corner of the page.

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